Supreme Court, U.S.
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No. 09-860

In The
SUPREME COURT OF THE

MONA PRADIER,

Petitioner

v.

UNITED STATES POSTAL SERVICE,

Respondent

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

PETITION FOR WRIT OF CERTIORARI WITH APPENDIX

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Dated January 19, 2010

QUESTIONS PRESENTED

Does conflicting evidence presented by various witnesses prove by a preponderance of the evidence that Petitioner used her managerial position to improperly influence her subordinate employees to give her a birthday party?

Assuming that the Respondent's charges were meritorious, did respondent prove that Petitioner's removal promotes the efficiency of the service, notwithstanding Respondent's failure to engage in a reasoned, thorough consideration of the *Douglas* factors and to select a penalty that was within the bounds of reasonableness?

CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 29.6, of the Rules of the Supreme Court of the United States, Mona Pradier certifies that she is not a corporation.

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DECISIONS BELOW

By memorandum dated July 13, 2007, the United States Postal Service ("Agency") issued a Letter of Decision removing Petitioner from her position as Manager of Distribution Operations ("MDO"), effective July 20, 2007.

By Initial Decision dated March 31, 2008, Administrative Judge ("AJ"), Marie A. Malouf, for the Dallas Regional Office of the Merit Systems Protection Board ("Board") affirmed the Agency's decision to remove Petitioner, Docket DA-0752-07-0508-I-1.

Prior to the AJ's order becoming final, on April 29, 2008, the Petitioner timely filed a Petition for Review ("PFR") with the full Board.

The full Board denied Petitioner's PFR, and the AJ's Initial Decision became a final order. The full Board issued a final order on Docket DA-0752-07-0508-I-1 on August 1, 2008.

On July 7, 2008, Petitioner timely filed a Notice of Appeal in United States Court of Appeals for the Federal Circuit ("Federal Circuit").

By Judgment dated October 22, 2009, the Federal Circuit affirmed the decision set forth in the Board's final order, Case Number 2009-3007.

JURISDICTION

By Judgment dated October 22, 2009, the United States Court of Appeals for the Federal Circuit, affirmed the Merit Systems Protection Board's final order affirming Respondent's removal of Petitioner. This Court has jurisdiction under 28 U.S.C. § 1254, which allows for review of cases in the courts of appeals.

CONSTITUTIONAL AND STATUTORY PROVISIONS

5 C.F.R. 1201.56(c)(1) (2007), in relevant part, defines substantial evidence as follows:

> "The degree of relevant evidence that a reasonable person, considering the record as a whole, might accept as adequate to support a conclusion, even though other reasonable persons might disagree."

5 C.F.R. 1201.56(c)(3) (2007), in pertinent part, defines harmful error as follows:

> "Error by the agency in the application of its procedures that is likely to have caused the agency to reach a conclusion different from the one it would have reached in the absence or cure of the error."

5 U.S.C. 7703(c) is as follows:

"(c) (1) Subject to paragraph (2) of this subsection, the decision of the agency shall be sustained under subsection (b) only if the agency's decision— ..."

"(B) in any other case, is supported by a preponderance of the evidence."

"(2) Notwithstanding paragraph (1), the agency's decision may not be sustained under subsection (b) of this section if the employee or applicant for employment—

(A) shows harmful error in the application of the agency's procedures in arriving at such decision;

(B) shows that the decision was based on any prohibited personnel practice described in section 2302 (b) of this title; or

(C) shows that the decision was not in accordance with law. "

STATEMENT OF THE CASE

This appeal involves the reasonableness of the Federal Circuit's decision to affirm the Board's decision to affirm Petitioner's. The basis for federal jurisdiction in the Merit Systems Protection Board is 5 U.S.C. §§ 7511-7513. The basis for federal jurisdiction in the Federal Circuit is 5 U.S.C. § 7703(b)(1), which permits court of appeals review of final orders and decisions by the Board.

Prior to her removal, Petitioner had been employed as a MDO at the Agency's General Mail

Facility ("GMF") in Lafayette, Louisiana where she had worked for approximately twenty-five years prior to her removal. App. 56a. During these twenty-five years prior to the incident that prompted her removal, Petitioner was only disciplined once, about twenty-two years prior to the removal. App. 56a. In the course of her career at the Agency, Petitioner demonstrated excellent work performance and got along well with her managers. App. 57a. Additionally, Petitioner worked ten (10) years without using any sick days. Even the Senior Plant Manager Jerry LeDoux, the deciding official in Petitioner's case, considered her a productive employee. App. 57a.

The circumstances underlying the instant action began sometime in the month of August, 2005. On or around the Petitioner's birthday, Agency employees Sheila Wiltz, Linda Myers and Crystal Boutte organized an office birthday party for Petitioner without her knowledge. App. 48a. Twenty-five (25) of the twenty-six (26) witnesses who gave testimony stated that they heard of the party by one of the organizers or by word of mouth, but not from Petitioner herself.[1] App. 43a.

Approximately one (1) week before Petitioner's birthday party, the organizers, predominantly Ms. Wiltz, asked various employees to donate a small amount of money toward the food

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[1] The only witness who stated that Petitioner informed him of her birthday party and invited him was Daniel Thibodeaux. App. 35a.

at party.[2] App. 33a. Some of the employees Ms. Wiltz (and possibly other employees) approached included: Sandra Campbell, Troy Gallet, Paula Hargrave, Daniel Thibodeaux, Patrick Cluse, Raymond Vavasseur, Floyd Jones, Caldwell Joseph, Marc Wright, Alfred Babin, and Michele Francis. App. 46a.

Sometime between 1:30 am and 5:30 am, on the night of the birthday party, a safety meeting was called over the loud speaker and everyone gathered in the break room for the weekly safety meeting that was to be followed by Petitioner's birthday party.[3] App. 32a. When Petitioner entered the room, everyone yelled "surprise." App. 50a. Floyd Jones and Caldwell Joseph both confirmed that Petitioner was surprised at the party upon entering the break room. App. 41a. Petitioner then read the safety talk which lasted a few minutes and she encouraged the employees to eat the food provided at the party during their allotted break time after the safety talk ended. App. 39a.

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[2] The donation requested principally by Wilkes was typically five dollars (J.A. at 8-9). Raymond Vavasseur confirmed that it was an ordinary practice for employees to donate money for food for parties at the Agency. App. 40a.

[3] Patrick Cluse, Floyd Jones, Caldwell Jose, Marc Wright, and Deidra Brown all confirmed that Petitioner's birthday party was held after the safety meeting. (J.A. at 7-18). Though Dayna Falcon stated that there was no safety meeting while she was in the break room, she left the meeting shortly after Petitioner came in and thus, could not be certain that a safety meeting did not occur. App. 31a.

At the party, there were cake, refreshments, and other food employees brought, which were common at office celebrations.[4] App. 41a. No gifts were present at the party, although Petitioner did receive gifts after the party in her office from her god-child and Agency employee Bethany Knatt.[5] App. 50a. Gifts given to the Petitioner by Knatt included a journal, and a CD. Id. Petitioner also received a spa gift certificate and yellow roses from Knatt's mother. App. 51a. Knatt left the yellow roses and other gifts on Petitioner's office desk and a few employees, including Gary Parker, testified that they saw gifts on Petitioner's desk after the party. App. 38a. Knatt testified that giving Petitioner birthday gifts "is a normal ritual for us because we always exchanged gifts." App. 47a

Based on testimony by various witnesses who attended and did not attend the party, the celebration lasted from fifteen to thirty minutes. The length of break time allotted to the Agency's employees after the safety talk was fifteen

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[4] Various employees testified that parties at the facility were common including: Dayna Falcon, Daniel Thibodeaux, Patrick Cluse, Raymond Vavasseur, Floyd Jones, Caldwell Joseph, Deidre Frank, Marc Wright, Alfred Babin, Linda Myers, Sheila Wiltz, Gary Parker and Michele Francis. App. 43a. Specifically, Caldwell Joseph, Deidre Frank, Marc Wright, Alfred Babin, Linda Myers, and Sheila Wiltz recalled that parties for managers were held at the facility. App. 43a.

[5] While Paula Hargrave, Daniel Greneaux and Deidra Brown testified that she definitely received gifts at the party in the break room, Gary Parker, Raymond Vavasseur, Caldwell Joseph, Marc Wright, Alfred Babin and Linda Myers stated that they did not see gifts at the party held in the break room. App. 42a.

minutes and Petitioner specifically instructed the employees to utilize the fifteen minutes, although some employees may have stayed longer. App. 35a. Witnesses Cluse and Jones confirmed that the party lasted about fifteen minutes and some witnesses, like Babin and Hargrave, returned to work after fifteen minutes. App. 35a.

The party was held on a "slow" night, as was usually the case when safety meetings were held. App. 40a. While the party was ongoing, the GMF was still operational and not completely shut down. App. 38a. During the party, Troy Gallet stated that there was a skeleton crew working and Raymond Vavasseur testified that "the Postal operations were not disrupted because it was a 'light' night." App. 40a.

On March 28, 2007, a Notice of Proposed Removal was sent to Petitioner, stating that Petitioner submitted a list of gifts that she wanted the employees under her supervisions to buy for her. App. 69a. Upon receipt of this notice, this was the first time Petitioner heard that she submitted a list of gifts to her employees prior to the 2005 birthday party. App. 95a. Not only was the gift list not produced, but very few witnesses testified that they saw such a list. While Troy Gallet, Sandra Campbell, and Paula Hargave said they saw a gift list, Gary Parker, Leona Breaux, Patrick Cluse, Raymond Vavasseur, Floyd Jones, Deidre Frank, Marc Wright, Alfred Babin, Sheila Wiltz, Deidra Brown, Patricia Harris and Rodney White specifically testified that they never saw such a list.

App. 39a. Additionally, Raymond Vavasseur, Floyd Jones, Marc Wright, Alfred Babin, Sheila Wiltz, Deidra Brown, Patricia Harris, and Rodney White stated that they had not heard nor knew about such a gift list. Id.

In the Agency's Letter of Decision, LeDoux treated Petitioner's offense as one of zero-tolerance. App. 59a. Although, LeDoux mentioned a few Douglas factors, he failed to adequately weigh all the pertinent factors and consider them in regard to Petitioner's charge. App. 57a. In the Initial Decision, the AJ sustained the Agency's charge despite the mitigating factors of Petitioner's length of service, her good work performance and the lack of any recent discipline because she considered the offense a serious one in the light of Petitioner's supervisory position. App. 59a.

Sometime in August 2005, Petitioner allegedly used her position to influence employees under her supervision to give her a birthday party, along with submitting a list of gifts she wanted those employees to buy. App. 31a.

Upon investigation of the circumstances of the birthday party, Petitioner was removed from her position for allegedly engaging in unacceptable conduct. App. 30a.

Petitioner filed a timely appeal with the Board, challenging her removal. App. 31a. After a hearing on the matter, the AJ sustained Petitioner's removal, finding that the Agency had carried its

burden of establishing the charge of unacceptable conduct by a preponderance of the evidence and that the Agency's penalty of removal was reasonable and promotes efficiency of service. App. 56a.

REASONS FOR GRANTING PETITION

I. AFFIRMANCE OF PETITIONER'S REMOVAL WAS IN ERROR, BECAUSE THE CHARGES ARE UNSUPPORTED BY SUBSTAINTIAL EVIDENCE ON THE RECORD.

In order to prove a charge of unacceptable conduct, an agency must carry its burden of establishing by preponderant evidence the following elements: (1) the employee engaged in the alleged conduct; and (2) the conduct was improper, unsuitable, or detracted from the appellant's character or reputation. See Crouse v. Dept. of Treasury, 75 M.S.P.R. 57 (1997), rev'd on other grounds sub nom; La Chance v. M.S.P.B., 147 F.3d 1367 (Fed. Cir. 1998); Otero v. U.S. Postal Service, 73 M.S.P.R. 198 (1997); Miles v. Dept. of Army, 55 M.S.P.R. 633 (1992). A charge of unacceptable conduct, by its nature, is broad and amorphous. And, barring Agency regulations to the contrary, the Board applies its own definition for unacceptable conduct. See, e.g., Best v. U.S. Postal Service, 41 M.S.P.R. 124, 129 (1989); see also Miles, 55 M.S.P.R. at 637. Consequently, the substance of an unbecoming charge is determined by the specifications.

A. The Record Is Devoid of Evidence that Petitioner Used Her Position to Influence Subordinates to Have Them Throw Her a Birthday Party.

In her Initial Decision, the AJ dismissed the majority of the testimony in Petitioner's favor that Petitioner had no knowledge of the party and did not ask any employees to throw her a birthday party. App. 52a. This conclusion reached by the AJ was based on conjecture and not witness testimony. Testimony from all twenty-six witnesses indicated that not one witness was asked by Petitioner to throw a birthday party for her. App. 53a. When Wiltz, one of the party organizers, was asked whether Petitioner instructed Boutte, Myers or herself to give her a party, Wiltz stated that Petitioner did not even know about the party because it was intended to be a surprise. App. 45a. Only one employee, Daniel Thibodeaux, specifically testified that Petitioner had knowledge of the party and no one testified that Petitioner asked them to throw her a party. App. 35a. However, even if Petitioner knew about the party, again, the evidence does not state that Petitioner asked any employee to throw her a party.

Wiltz testified that she heard "through the grapevine" that Petitioner's birthday was coming up and that she, Boutte and Myers decided to give her a surprise party. App. 45a. The organizers also specifically told employees that the party was going to be a surprise party and word of mouth traveling

through the GMF indicated that Petitioner's party was going to be a surprise. (J.A. at 11).

The AJ failed to reasonably take into account Boutte's, Wiltz's and Myers' testimonies about organizing, though Wiltz specifically testified that Boutte, Myers, and herself decided to throw Petitioner a surprise party. App. 45a. Wiltz stated that she asked other Agency employees if they wanted to donate food "or whatever they wanted to donate . . . to help with the party" they could. App. 88a. Additionally, Boutte also confirmed that she helped out with the party by donating food, and Myers verified that she assisted in organizing the party by also donating food and by telling employees that they could make monetary contributions toward food for the party. App. 45a.

The AJ also found that "[t]he appellant contended that she could not have coerced or influenced any employee's participation in the party because she did not talk with anyone about the party. Yet, such coercion could easily exist where employees who were thought to be her agents informed other employees of the party and sought 'contributions.'" App. 54a. Again, the AJ failed to consider the overwhelming testimony that Petitioner had no knowledge of the party and that it was intended to be a surprise party. When Petitioner entered the break room for her party, everyone yelled "surprise" and a few employees testified that she looked surprised as she entered the room with papers for the safety talk. App. 40a. Also, when the organizers were informing the employees of

Petitioner's party, they referred to it as a surprise party and those who heard of the party through word of mouth were also told it was a surprise party. App. 43a.

After weighing this evidence, no reasonable fact-finder could conclude that the employees considered the organizers to be agents of Petitioner and thus, could feel coerced by Petitioner for not attending the party. Additionally, the fact that no employee testified that Petitioner asked them to throw her a birthday party speaks for itself that the AJ did not weigh the evidence properly in concluding that Petitioner influenced her employees.

B. The Record Is Devoid of Evidence that Petitioner Submitted a List of Gifts She Wanted Employees Under Her Supervision to Buy Her.

The AJ also committed reversible error when she ignored the evidence on record that Petitioner did not "submit or give, circulate, pass around" a gift list. App. 93a. No list was ever physically produced, and only three employees said they saw such a gift list, while Gary Parker, Leona Breaux, Patrick Cluse, Raymond Vavasseur, Floyd Jones, Deidre Frank, Marc Wright, Alfred Babin, Sheila Wiltz, Deidra Brown, Patricia Harris and Rodney White testified that they did not ever see such a list. App. 38a.

It is perplexing why the AJ chose to believe the scant minority that a gift list was present. The

AJ explains her reasoning on the existence of the gift list as she found the three witnesses testimony more credible than the thirteen, because the three described some of the gifts listed. App. 55a. The AJ takes this same rationale when she determined that presents were also opened at the party and not after the party. Id. Although, several employees did not see gifts at the party, the AJ concluded that there were gifts from the minority testimony of only a few employees. App. 55a. The AJ also failed to take into account that those who saw gifts at the party (which occurred two years prior) could have been mistaken because they probably saw Petitioner's gifts in her office, as Parker did, saw Knatt with the gifts, or saw Petitioner taking gifts to her car. App. 35a.

Thus, the AJ disregarding the overwhelming evidence in favor of Petitioner was arbitrary, capricious, and an abuse of discretion. Based on the various witness testimony that heavily weighed in favor of Petitioner, no rational fact-finder would conclude that the Agency met its burden of proving Petitioner used her position as MDO to influence employees to throw her a birthday party and buy her gifts through a circulated gift list.

II. EVEN IF THE BOARD'S DECISION TO SUSTAIN THE CHARGES AGAINST PETITIONER WAS NOT IN ERROR, THE BOARD ERRED WHEN IT UPHELD THE AGENCY'S DECISION THAT REMOVAL WAS AN APPROPRIATE PENALTY; THUS, MITIGATION IS WARRANTED.

Although federal agencies have great discretion in deciding upon appropriate disciplinary action for misconduct, that discretion is not unfettered. See Smith v. Dept. of Air Force, 48 M.S.P.R. 594, 599 (1991). The agency has the burden of proof on the penalty, and it must support its penalty determination as a distinct element of the agency decision under 5 U.S.C. § 7701(c). Douglas v. V.A., 5 M.S.P.R. 280, 302-02, 307-08 (1981). Thus, the agency must not only prove the change by a preponderance of the evidence, but also establish a nexus between an agency action based on that charge and "the efficiency of the service," and support the penalty it selected under the same "efficiency of service" standard. Id. at 303; see Doe v. Hampton, 566 F.2d 265, 272-273 (D.C. Cir. 1977).

In Douglas v. Veterans Administration, the seminal case that delineated the framework by which the reasonableness of proposed penalties should be evaluated, the Board outlined the factors that must be considered in determining the appropriate penalty for infractions committed by federal employees. 5 M.S.P.R. at 330-335. Under Douglas in assessing whether a given penalty is reasonable, the following factors must be considered: (1) the nature and seriousness of the offense, and its relation to the employer's duties, position, and responsibilities (including whether the offense was intentional; technical or inadvertent; or was committed maliciously or for gain; or was frequently repeated); (2) the employee's job level and type of employment; (3) the employee's past disciplinary record; (4) the employee's past work record,

including length of service and performance on the job; (5) the effect of the offense upon the employee's ability to perform work at a satisfactory level; (6) consistency of the penalty with the agency's table of penalties; (8) the notoriety of the offense; (9) the clarity with which the employee was on notice of any rules that were violated; (10) the potential for the employee's rehabilitation; (11) the mitigating circumstances surrounding the offense, such as unusual job tension and personality problems; and (12) the adequacy and effectiveness of alternative sanctions. Id. at 332.

In the present case, the first and second Douglas factors weigh in favor of the Petitioner. Petitioner had no knowledge, as the record shows, that the employees on her shift were throwing her a birthday party and thus, her actions are at most, inadvertent. Likewise, the Petitioner did not have knowledge about the alleged gift list until she received her Notice of Proposed Removal and thus, her actions here can also at most, be called inadvertent. Out of the twenty-six witnesses that testified in front of the AJ, only Thibodeaux testified that Petitioner made specific comments that there was going to be party for her birthday. App. 36a. Additionally, witnesses Jones and Joseph confirmed that Petitioner looked surprised when she arrived at the party in the break room. App. 41a.

LeDoux, the deciding official in this case, mentioned a few Douglas factors in the Letter of Decision, but he failed to adequately weigh all the pertinent factors in regard to Petitioner's charge.

App. 69a. Rather, he applied somewhat of a zero-tolerance policy to justify Petitioner's removal. Id. Additionally, DeLoux charged Petitioner with the specification of "influence[ing] employees under her supervision," which is in itself, nebulous in regard to considering the seriousness of the offense and the other Douglas factors. App. 69a.

Although, LeDoux considered Petitioner's actions serious, since it occurred while employees were on the clock at a critical time for postal operations and had the potential to create a hostile work environment for those not wanting to participate, his reasoning goes against the case law. The case law indicates that although supervisors have a higher duty to conduct themselves in a respectable and acceptable manner, far more serious actions, and not actions by Petitioner, constitute removal. See Vargas v. U.S. Postal Service, 83 M.S.P.R. 65 (1999); see also Fowler v. U.S. Postal Service, 77 M.S.P.R. 8 (1997).

In Vargas v. U.S. Postal Service, Martha Vargas was a Customer Services Supervisor that was removed for Unacceptable Conduct, specifically Borrowing Money from Subordinates. 83 M.S.P.R. 695 (1999). The Board affirmed the Initial Decision and sustained the Agency's charges. Id. Ms. Vargas did not merely borrow a few dollars from each of her subordinates, but a sum that amounted of $11,000 from three non-management employees. Id. Vargas' actions cannot be compared to Petitioner's in which a few employees collected voluntary donations of

food a few dollars for a party Petitioner had no knowledge of.

Petitioner's actions did not amount to create a serious offense. Petitioner held a supervisory position as an MDO and thus, her duties and responsibilities required her to not use her position to coerce her subordinates. However, only two witnesses, Gallet and Campbell, reported that the gift list, and not the party itself, was inappropriate. App. 33a. Several other employees (such as Wiltz, Babin, Frank, Joseph, and Wright) regarded parties and parties for management as a common occurrence and, because Petitioner did not ask for gifts or contributions from the employees herself, coercion was likely not involved. App. 43a. Also, the fact that only Petitioner's god-child, Knatt, and Knatt's mother bought her gifts illustrated that the overwhelming majority of the workers did not feel pressured if they did not buy her gifts. Likewise, some employees, including Patricia Harris, did not attend the party and felt no pressure to attend Petitioner's party. App. 49a.

Petitioner's conduct also deviates from that found in Fowler v. U.S. Postal Service, in which the Board sustained the Agency's removal action on the charge of Unacceptable Conduct specifically, Making Personal Loans to Himself with Postal Service Funds. 77 M.S.P.R. 8 (1997). Gary Fowler, as EAS-18 Postmaster, issued a money order to himself for $430.49 made payable to a car repair shop, an amount that was not de minimis. Id. Although Fowler repaid the funds before being discovered, the

Board found that it was a very serious breach of his accounting responsibilities as a Postmaster, which could not be mitigated due to his unsatisfactory work experience (among other factors). Id.

In the present case, Petitioner did not fail in her supervisory responsibilities. She gave her safety talk, which preceded her party and encouraged everyone to take their allotted break time. Many witnesses testified that the party did not last longer than thirty minutes and Jones stated that the party did not last longer than other parties that had taken place. App. 40a. While some employees took their regularly scheduled fifteen minute break after safety talks, others, such as Vavasseur, took their lunch break during the party. App. 42a. Additionally, a few witnesses testified that operations were not completely shut down and it was a "light" night and not a critical time of operation, as LeDoux indicated. App. 40a. Thus, Petitioner did not materially neglect her duties as MDO, amounting to a serious offense.

The third and fourth Douglas factors also weigh in favor of Petitioner. Out of twenty-five years of working for the Agency, she had twenty two years that were devoid of discipline. App. 56a. Of her twelve years working in a supervisory position, she was not subject to discipline. Id. She was a model employee and supervisor, not taking any sick days in ten years and encouraging her workers to do the same. Id. Even LeDoux, who was responsible for making the Agency's final decision, considered her a productive employee. App. 57a.

The remaining Douglas factors are favorable to Petitioner. The offense had not affected her ability to work at a satisfactory level because Petitioner was an excellent and productive employee until her removal, which was almost two years after the incident. App. 73a. The type of offense was not one of notoriety such as sexual harassment, which is usually tied to supervisors charged with Unacceptable Conduct. See Roth v. U.S. Postal Service, 54 M.S.P.R. 290 (1992). Furthermore, the fact that Petitioner did not receive notice of the offense weighs unfavorably on the Agency as to why it waited so long to notify Petitioner of the alleged wrongdoing. The potential for Petitioner's rehabilitation is also great. The offense, unlike those found in Vargas and Fowler, is not so serious that Petitioner is incapable of rehabilitation. The incident was only a one-time event and not repeated by Petitioner, even the following year of her birthday, absent the Agency's notice. And thus, if Petitioner has already not been rehabilitated, the evidence shows that she can be. Conclusively, the charged offense is merely an offense that warrants mitigation, not removal.

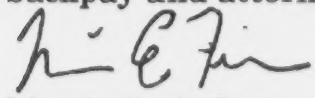
Although the Board will give deference to agency decisions, it nonetheless requires agencies to determine penalties responsibly and fairly quickly so that employees are equitably penalized for like or similar offenses and extenuating circumstances are appropriately considered, along with the present evidence with respect to the appropriateness of the penalty. Here, even if a rational fact-finder could

have concluded that the Agency carried out its burden in establishing the Unacceptable Conduct charge against Petitioner, no rational fact-finder could have concluded that the penalty of removal comports with the principles and policies outlined in Douglas.

Failure to make a bona-fide attempt to apply the mitigation, in light of the weight of the several factors favorable to Petitioner shows that the deciding official's penalty was inappropriate. Thus, the AJ's decision to uphold the penalty of removal was arbitrary, capricious and an abuse of discretion.

CONCLUSION

The AJ committed reversible error when she sustained the charge against Petitioner and upheld her removal based on that charge. Thus, Petitioner seeks review and reversal of this decision. Specifically, Petitioner seeks reinstatement with backpay and attorney's fees.



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COUNT CERTIFICATION

As required by Supreme Court Rule 33.1(h), I certify that the document contains 4,336 words, excluding the parts of the document that are exempted by Supreme Court Rule 33.1(d).

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 1/20, **20**10.

(Signature)

Note: This disposition is nonprecedenial.

United States Court of Appeals for the Federal Circuit

2009-3007

MONA PRADIER,

Petitioner,

v.

UNITED STATES POSTAL SERVICE,

Respondent.

Morris E. Fischer, Law Office of Morris E. Fischer, of Bethesda, Maryland, for petitioner.

Matthew H. Solomson, Trial Attorney, Commercial Litigation Branch, Civil Division, United States Department of Justice, of Washington, DC, for respondent. With him on the brief were Michael F. Hertz, Deputy Assistant Attorney General, Jeanne E. Davidson, Director, Harold D. Lester, Jr., Assistant Director, and Daniel Rabinowitz, Trial Attorney.

Appealed from: Merit Systems Protection Board

NOTE: This disposition is nonprecedential.

United States Court of Appeals
for the Federal Circuit

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MONA PRADIER,

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UNITED STATES POSTAL SERVICE,

Respondent.

Judgment

ON APPEAL from the Merit Systems Protection Board in CASE NO(S). DA0752070508-I-1

This CAUSE having been heard and considered, it is

ORDERED and ADJUDGED:

Per Curiam (NEWMAN, PLAGER, and MOORE, Circuit Judges).

AFFIRMED. See Fed. Cir. R. 36.

ENTERED BY ORDER OF THE COURT

DATED October 22, 2009 _____
Jan Horbaly, Clerk

UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD

MONA PRADIER,
Appellant,

DOCKET NUMBER
DA-0752-07-0508-1-1

v.

UNITED STATES POSTAL SERVICE,
Agency.

DATE: August I, 2008

Albert E. Lum, Esquire, Maspeth, New York, for the appellant.
Paul C. Wolf, Esquire, Dallas, Texas, for the agency.

BEFORE

Neil A. G. McPhie, Chairman
Mary. M. Rose, Vice Chairman

FINAL ORDER

The appellant has filed a petition for review in this case asking us to reconsider the initial decision issued by the administrative judge. We grant petitions such as this one only when significant new evidence is presented to us that was not available for consideration earlier or when the administrative judge made an error interpreting a law or regulation. The

regulation that establishes this standard of review is found in Title 5 of the Code of Federal Regulations, section 1201.115 (5 C.F.R. § 1201.115).

After fully considering the filings in this appeal, we conclude that there is no new, previously unavailable, evidence and that the administrative judge made no error in law or regulation that affects the outcome. 5 C.F.R. § 1201.115(d).

2 Therefore, we DENY the petition for review. The initial decision of the administrative judge is final. This is the Board's final decision in this matter. **5 C.F.R. § 1201.113.**

NOTICE TO THE APPELLANT REGARDING YOUR FURTHER REVIEW RIGHTS

You have the right to request the United States Court of Appeals for the **Federal Circuit to** review this final decision. You must **submit your request to the court at the following** address:

United States Court of Appeals
for the Federal Circuit
717 Madison Place, N.W.
Washington, DC 20439

The court must receive your request for review no later than 60 calendar days after your receipt of this order. If you have a representative in this case, and your representative receives **this** order before you do, then you must file with the court no later than 60 calendar days after receipt by your representative. If you choose to file, be very careful to file on time. The court has held that normally it does not have the authority to waive this statutory

deadline and that filings that do not comply with the deadline must be dismissed. *See Pinat v. Office of Personnel Management, 931* F.2d 1544 (Fed. Cir. 1991).

If you need further information about your right to appeal this decision to court, you should refer to the federal law that gives you this right. It is found in Title 5 of the United States Code, section 7703 (5 U.S.C. § 7703). You. may read this law, as well as review the Board's regulations and other related material, at our website, http://www.mspb.gov. Additional information is available at the court's website, www.cafc.uscourts.gov. Of particular relevance is the court's "Guide for Pro Se Petitioners and Appellants," which is contained within the court's Rules of Practice, and Forms 5 6, and 11.

FOR THE BOARD:

William D. Spencer
Clerk of the Board

Washington, D.C.

CERTIFICATE OF SERVICE

I certify that this Order was sent today to each of the following:

Certified Mail — Albert Lum
Scialla Associates
52-40 72nd Place
Maspeth, NY 11378

U.S. Mail — Mona Pradier
222 Angelloz Street
Lafayette, LA 70501

Electronic Mail — Paul C. Wolf, Esq.
United States Postal Service P.O. BOX 227078
DALLAS, TX 75222-7078

August 1, 2007
(Date)

Marie Warcholak
Legal Assistant

UNITED STATES OF AMERICA
MERIT SYSTEM S PROTECTION BOARD
DALLAS REGIONAL OFFICE

MONA PRADIER,
Appellant

DOCKET NUMBER
DA-0752-07-0508-i-1

v.

UNITES STATES POSTAL SERVICE,
Agency

Albert Lum, Esquire, Maspeth, New York, for the appellant. Paul C. Wolf, Esquire, Dallas, Texas, for the agency.

BEFORE
Marie A. Malouf
Administrative Judge

INITIAL DECISION

On August 2, 2007, Mona Pradier appealed the action of the U.S. Postal Service which removed her from her position, effective July 20, 2007, The Board has jurisdiction over this timely filed appeal pursuant to 5 U.S.C. §§ 7511-7513. At the appellant's request, a hearing was held.

Based on the following analysis and findings, the agency's action is AFFIRMED.

ANALYSIS AND FINDINGS

The agency bears the burden of proving its charge by preponderant evidence.

The appellant was employed by the agency as Manager of Distribution Operations at its General Mail Facility (GMF) in Lafayette, Louisiana. Appeal File (AF) Tab 6 at 20.[1] In 2006, Carolyn Chambers, the Lead Plant Manager of the Lafayette GMF, reported to the Office of Inspector General (OIG) that the appellant was suspected of using her position to influence the actions of agency employees under her supervision. The OIG conducted an investigation into the allegations. The investigation determined that, in August 2005, the appellant used her position as the MDO to influence employees under her supervision to give her a birthday party and that she provided employees with a list of gifts that she wanted for her birthday. AF Tab 6 at 96. Based on the results of the OIG investigation, the agency removed the appellant from her position for unacceptable conduct. AF 6 at 48. The agency bears the burden of proving its charge by

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[1] Preponderant evidence is that degree of relevant evidence that a reasonable person, considering the record as a whole, would accept as sufficient to find that a contested fact is more likely to be true than untrue. 5 C.F.R. § 1201.56(c)(2) (2007).

preponderant evidence.[2] 5 U.S.C. § 7701(c)(1)(b).

On appeal, the appellant asserted that she did not engage in the conduct set out in the proposal notice. She requested that the agency's action be reversed. AF Tab 1.

The agency proved its charge by preponderant evidence.

Under its charge of unacceptable conduct, the agency alleged that, on or about August 2005, the appellant used her position to influence employees under her supervision to give her a birthday party. AF Tab 6 at 48. According to the agency's proposal notice, employees under the appellant's supervision informed agency managers that the appellant directed her employees to give her a birthday party at the Lafayette GMF. AF Tab 6 at 48. Employees also alleged that the appellant passed around a list of gifts 'that she wanted the employees to buy her as birthday presents. *Id.* In support of its charge, the agency called Dayna Falcon, Sandra Campbell, Troy Gallet, Daniel Greneaux, Paula Hargrave, Daniel Thibodeaux, and Gary Parker to testify.

Dayna Falcon, a Mail Processing Clerk, testified that approximately one to two weeks

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[2] The agency's response to the Board's Acknowledgment Order was submitted by electronic filing. The index to the submission references tabs but there are no tabs dividing the documents in the agency's file. Instead of submission in paginated at the lower right hand corner. References to documents in the agency's file will be to the page number of the document.

before the appellant's birthday party, she saw the appellant, Wiltz, and another person in the locker room. Falcon reported that, while in the locker room, she overheard the appellant tell the other employees that her birthday was coming up and she would like a party. She said that she was not watching the appellant and Wiltz at the time the appellant was speaking but she heard the appellant make the statement. She said that she had worked at the GMF for ten years and she knew the appellant's voice. She indicated that someone later approached her about the party, but she could not recall who it was and she did not remember being asked for any money. She said that, on the day of the party, around 5:30 a.m., the employees were called to the break room to attend a safety meeting.[3] Falcon stated that the appellant was already in the room when she reported to the break room. She said that the appellant turned on a boom box for music and, at that point, it was evident that the meeting was not about business so she went back to the work area. She testified that no safety meeting was held while she was in the break room. Falcon confirmed that there had been other parties at the facility, for example for the CFC Campaign, but she could not recall any parties for employees' birthdays. She indicated that she presumed that postal operations were stopped during the party. Hearing Tape (HT) 1B.

[3] Falcon reported that 5:30 a.m. was not her normal break time, although it might have been a break time for other employees. HT 18.

Sandra Campbell testified that, in August 2005, a co-worker, Sheila Wiltz, informed her that there was going to be a birthday party for the appellant and asked her for a $5 donation. Campbell said that she did not contribute to the party and she did not attend it. She stated that she did not have any conversation with the appellant about the party but, prior to the party, the appellant gave her a birthday' gift list. HT 1B. She said that she looked at the list but she did not recall how many gifts were on the list. Campbell stated that she thought it, was inappropriate for the appellant to request gifts so she discussed the list with Troy Gallet, a co-worker and union steward. She reported that he also thought it was unethical and she gave him the list to discuss during a labor management meeting that was scheduled the next day. She indicated, however, that she did not think that he brought the list up for discussion. HT 2A. Campbell confirmed that other parties had been held at the GMF. HT 2A.

Troy Gallet, a Mailhandler and a subordinate employee of the appellant, testified that he worked at the GMF in August 2005. HT 1A. He said that he remembered the appellant's birthday party, indicating that another employee told him about the party and that money was being collected. Gallet reported that he indicate saw a list of gifts which included religious music.[4] Gallet indicated that he was a

[4] Gallet said that, at one point, he had a copy of the list. He could not remember who gave him the gift list or what he ultimately did with it. HT IA.

new union steward at the time and he was going to bring up the gift list at the next labor management meeting because he felt the situation was becoming unethical. He indicated that he did not bring it up because he "chickened out." Gallet said that he did not attend the party; he did not know whether it was a surprise party; and he could not remember how long it lasted. He stated that, for the duration of the party, the plant was generally shut down with the exception of a few employees who continued to work. HT 1A. The record reflects that Campbell and Gallet complained about the gift list to a supervisor, Arthur Willis, the Tour 1 MDO. AF Tab 4(4J) at 54.

Paula Hargrave testified that, in 2005, she was approached by Wiltz and Crystal Boutte, who informed her that the appellant had asked them to give her a party. Wiltz and Boutte requested that Hargrave donate $5 for the party. Hargrave stated that she gave $5 to Wiltz for the party. When asked whether she felt coerced, she replied that she felt uncomfortable giving the money but felt that she needed to give because she was a new supervisor and she did not want to be singled out for failing to participate. Hargrave explained that the appellant was a higher level supervisor than she was. HT 2B.

Hargrave confirmed that, prior to the party, she saw a list of gifts that the appellant wanted. Hargrave said that there were about ten items on the list, including CD's, DVD's,

and bath items, She explained that Campbell brought the list to her with a complaint that it was unethical.[5] Hargrave related that, on the same day she received complaints about the list from Campbell and another employee, she talked to the appellant and told her that circulating a gift list was unethical.[5] She said that the appellant knew about the list, but she acted like the list was a joke. Hargrave testified that she did not remember what happened to the list. She said that gifts were given to the appellant at the party„ indicating that she saw the gifts when she went into the break room to get the employees to go back to work and she later saw the appellant take the gifts to her car. Hargrave reported that, while the party was being held, the appellant shut down Tour I. She said that some employees stayed for 15 minutes, some for 30 minutes, and a few stayed longer. Hargrave testified that she went to the party for approximately 15 minutes — but she left because she was nervous about getting the mail processed.[6] HT 2B.

Daniel Thibodeaux, a Mail Processing Clerk, testified that, in August 2005, approximately one week before the appellant's birthday party, the appellant told him that there was going to be a party; that everyone was invited; and that food would be provided. He

[5] Hargrave related that the conversation occurred prior to the party, HT 2B.

[6] In her OIG statement Hargrave reported that the appellant: "kept Tour 3 employees on overtime to help run the machines will [sic] her party was going on." AF Tab 6 at 112.

indicated that the appellant made her comments about the party to a group of employees on the work room floor. Thibodeaux related that Parker, another supervisor also told him about the party and asked for a contribution, but he did not contribute any money. He said that he did not feel coerced or forced to attend the party or to contribute and he did not see any difference between the appellant's party and other parties held at the agency. Thibodeaux stated that parties were held for other employees but he reported, that those parties were for craft employees. He testified that, except for the appellant, he did not recall any parties being given for management employees. He indicated that employees took their lunch break for the party and the party lasted approximately 30 minutes or more. HT 2A.

Daniel Greneaux testified that in August 2005, he was present for the appellant's birthday party. He reported that employees were paged to a safety meeting in the break room, but the call was really for the appellant's party which had been set up in the break r_o_o_tm_11.e stated the he usually does not participate in social events at the GMF and, instead of going to the break room for the party, he went to the smoking area. Greneaux said that at one point during her party, the appellant knocked on the window and signaled for the employees in the smoking area to come inside so they could sing happy birthday to her. He said that he saw the appellant open some gifts, including a $75 gift certificate to a spa. He

stated he also saw some roses, but he could not recall how many gifts there were. Greneaux estimated that the party lasted "around an hour." He said he believed that, while the party was going on, most of the operations in the facility were shut down, although some employees were probably accepting trucks. He stated that he believed the essential operations continued. He said that he learned of the party from talking with other employees and he was told that it was supposed to be a surprise. He said that some employees were collecting money for the party, but no one asked him for money. HT 1A. The record reflects that Greneaux complained to Hargrave about the appellant's action requiring employees to participate in the party. AF Tab 6 at 113.

Gary Parker testified that, in August 2005, he was the Supervisor of Manual Operations at the Lafayette GMF.[7] HT 1A. He said that he was working on the date of the appellant's 2005 birthday party. He indicated that several employees told him that there would be a birthday party for the appellant. Parker reported that he did not recall hearing that the appellant organized the party but, the week before the party, he heard her say: "Its my birthday and we are going to have a good time." Parker denied that he collected any money for the party. On the day of the party, employees were called to the break room, but he did not

[7] Parker reported that he retired in December 2007. HT 1 A.

remember who made the announcement. He related that there was music and dancing at the party. He indicated that, after about 30 minutes, he told the employees that the mail had to get out and he directed them to get back to work. According to Parker's testimony, the party lasted approximately 45 minutes. He said that he could not specifically recall whether the "flat sorters" were working while the party was going on, but he did not think that they were. Parker said that he heard that a gift list was being circulated, but he did not see the list. He indicated that he saw some gifts on the appellant's desk after the party. Parker confirmed that there were brief parties for other employees where cake was served, but there was no dancing or music. HT 1A.

The appellant denied the agency's charge and called Leona Breaux, Patrick Cluse, Raymond Vavasseur, Floyd Jones, Caldwell Joseph, Deidre Frank, Mark Wright, Alfred Babin, Linda Myers, Sheila Wiltz, Crystal Boutte, Bethany Knatt, Deidre Brown, Janell LaCombe, Patricia Harris, Michele Francis, and Rodney White to testify.

Leona Breaux, a Registered Clerk, testified that the appellant was her supervisor. She related that, for the appellant's birthday, a safety meeting and break were held together and they had a celebration. She said that she attended the

party which tasted about 30 minutes and she left when her break time was over. Breaux stated that she did not remember a gift list and she did not feel coerced to attend the party. Breaux said that she could not recall who told her about the party. HT IA.

Patrick Cluse, a Mail Processing Clerk, testified that the appellant was his supervisor. He indicated that he learned of the party from "people going around and asking if he wanted to participate." He did not recall whether Sheila Wiltz or Crystal Boutte, or both, told him about the party, but he knew that they both planned the party, He said that he donated a couple of dollars for food but he did not remember who collected the money. He indicated that he did not see a gift list. He related that the employees were paged for a safety meeting and the meeting was combined with the break in order to hold the party. He said that there was a safety talk and food and, after the party, they went back to work. Cluse reported that the party lasted 15 to 20 minutes, but no longer than other meetings. He stated that there was no music or dancing. HT IA.

Raymond Vavasseur, an Automation Clerk, testified that the appellant was his supervisor. He indicated that he learned of the August 2005 birthday party from "rumors" on the work floor and from Boutte who told him they were going to give the appellant a party. Vavassuer stated that the appellant never talked with him about the party; he did not see a gift list; and he did not hear about a gift list. He

said that he went to the party and he might have given some money for food, but he did not remember contributing. He indicated that contributions were voluntary. He related that the employees were paged for a safety meeting and everyone said "Happy Birthday" to the appellant. He stated that she seemed surprised, indicating that she came into the room with papers for the safety talk. He said that the party lasted 30-45 minutes but the Postal operations were not disrupted because it was a "light" night. Vavasseur testified that, after the party, the employees went back to work. He reported that he did not remember any gifts at the party and indicated that usually there is food at parties, but no gifts. HT 1B.

Floyd Jones, a Postal Clerk, testified that there was a birthday party for the appellant, but he was not sure of the date. He said that Deidre Franks, a coworker, told him that there was going to be a surprise party for the appellant. Jones stated that he did not see a gift list and did not hear about a gift list, but there were gifts for the appellant at the party. He stated that he might have been asked about a donation for the party, but he did not recall whether he made a donation. He reported that if he had made a donation, he would have given the money to Franks. He indicated that the party was held after a safety meeting or some other meeting. Jones related that there are parties throughout the year and the appellant's birthday party was not any different than any

other party held in the GM-F. According to Jones' testimony, the party only lasted 15 minutes and, after the party, the employees went back to work. He testified that he did not think that anyone was coerced into participating and no one mentioned that they felt coerced. He said that the appellant seemed surprised by the party. HT 1B.

Caldwell Joseph testified that the appellant was his supervisor. He indicated that he learned of the appellant's birthday party from "some of the ladies" but he could not remember who told him about it. He explained that there are parties "all the time" at the agency, for both craft and management employees. He said that he was told he could give a gift or donate money and he gave some money, maybe to Boutte. He stated that he did not feel coerced to donate. Joseph related that he did not see a gift list or hear of one. He stated that he went to the party, but he did not remember how employees were called into the break room. He indicated, however, that he recalled that a safety meeting was held. He said that the appellant seemed surprised and happy about the party. Joseph reported that there was cake and other food but he did not specifically remember exactly what was served. He said that there was no dancing or music and he did not remember any gifts. Joseph testified that he did not remember how long the party lasted - maybe 30 minutes but it was not longer than any other parties held at the agency. HT IB.

Deidre Frank, a Postal Clerk, testified

that she recalled the appellant's birthday party, but could not remember when she first learned of it. She indicated that it was a surprise party. She said there was music, but no dancing and she did not see gifts nor did she see a gift list. Frank reported that she brought food, deviled eggs, to the party but she did not feel influenced or coerced to participate. She explained that there were parties for employees, including managers, "all the time." Frank testified that she did not approach any other employee about the party; she did not ask anyone for money for the party; and no one gave her any money for the party. HT 3A.

Marc Wright testified that a birthday party was given for the appellant in August 2005. He indicated that Wiltz told him about the party and that the party planners were taking donations for food. He said that he donated something, but he could not remember how much he donated. He stated that he did not feel coerced into making the donation. Wright stated that he did not see a gift list; he did not know about a gift list; and he did not see any gifts at the party. He related that, on the night of the party, there was a safety meeting and the party was held after the meeting. Wright reported that the party occurred during the lunch break, 30 minutes, and there was food but he did not recall any music or dancing. He said that there are often parties at the GMF, and there have been parties for supervisors. HT 3A.

Alfred Babin, a Mailhandler, testified that there was a party for the appellant's birthday. He indicated that one of the work leaders told him about the party and said that he could donate if he wanted. He did not remember whether he contributed anything, but he went to the party and had some cake. He said that the appellant was in the break room when he was there. He stated that he did not see any gifts; he did not see a gift list; and no one told him about a gift list. Babin related that he was in the break room for approximately 15-20 minutes at his lunch break. Babin stated that it is common to have birthday parties and those parties included managers. HT 3A.

Linda Myers, a Flat Sorter Operator, testified that, in August 2005, she assisted with the party for the appellant but denied that she organized the party. She related that she, Boutte, and Wiltz had a conversation about the appellant's upcoming birthday and they decided to give her a surprise birthday party. Myers said that "get togethers" are common at the agency and managers are included. Myers indicated that, "by word of mouth" they let employees know about the party and that they could donate money for food if they wanted. She stated that, although some employees indicated that she approached them about the party,[8] she did not

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[8] During supplemental interviews conducted by the OIG investigator, Tonious Carter, an Acting Supervisor, reported that Wiltz and Myers informed him about the party and they asked him to give $20. He reported to the OIG investigator that they told him he should give $20 or bring something to the

approach anyone about the party nor did she ask anyone to contribute to the party. FIT 2B. Myers said that she did not approach Breaux or Vavasseur about the party but stated that they may have given her money for the party. She indicated that the money the other employees gave was used to buy food, but she did not recall who gave money and she denied that Wiltz or Boutte gave her any money for the party. She reported that she did not recall what she brought to the party, but thought that she probably brought fried chicken and maybe some punch. Myers testified that she did not try to coerce or influence anyone to participate. HT 2B.

Myers related that, on the day of the party, there was a safety meeting and the party was held after the meeting. Myers said that she did not recall any music or dancing and she did not see any gifts. She stated that the party lasted approximately 20-30 minutes and everyone went back to work after the party. HT 2B.

Myers confirmed that, when she met with the agency's representative, she denied that the appellant asked her for a statement. When shown the affidavit she provided to the appellant, however, Myers admitted that the appellant had requested a statement and she had

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party because he was a supervisor. Further, he told the investigator that Wiltz and Myers told him that the appellant was going to find out who did not give money for her party. AF Tab 6 at 55.

given the appellant an affidavit. *See* Appellant's Ex. D, AF Tab 16. She said that she did not draft the statement but she did sign it. She denied that any of the donated money was used to buy gifts. Notwithstanding her testimony denying any involvement with soliciting donations or contributions from the appellant's subordinate employees, in her affidavit, Myers stated: "We approached employees on Tour 1 and Tour 3 and asked them to donate money to purchase food. ... The money collected was used to buy food such as cakes, soda, and candy for everyone to enjoy." Appellant's Ex D; AF Tab 16.

Sheila Wiltz, a Postal Clerk, testified that she worked at the GMF and she helped with the party for the appellant in August 2005. She reported that "through the grapevine," she heard that the appellant's birthday was coming up and she, Crystal Boutte, and Myers decided to have a surprise birthday for her. Wiltz denied that the appellant instructed them to give her a party. She stated that they told different employees that they were going to give the appellant a surprise birthday party and, if they wanted to donate food or anything else, they could. Wiltz indicated that she could not recall with whom she talked about the party. She maintained that she did not coerce or influence anyone concerning the party. HT 3A.

Wiltz stated that there are many parties at the agency and the appellant was not the first supervisor to have a party. Wiltz said that she did not know about a gift list and she never

saw one. She reported that, the day of the party, a safety meeting was announced and they had the party after the meeting. She said she attended the party and there were no gifts, and there was no music or dancing, but there was food. She said that the party lasted about 30 minutes. She confirmed that some employees donated money to her for the party, but she did not ask anyone to donate money.[9] Wiltz testified that the donations were used to buy food for the party and no gifts were purchased with the money.[10] In addition to monetary donations, Wiltz reported that different employees donated items including food, chips, dip, deviled eggs, and plates. Wiltz testified that she could not remember how much money was collected; what food was served; or what food she provided. HT 3A.

Wiltz denied that she approached Hargrave about the party; that she told Hargrave that the appellant wanted them to throw a party for her; or that she asked Campbell for $5. HT 3A-3B. Wiltz also provided an affidavit to the appellant to submit in this appeal. *See* Appellant's Ex. B, AF Tab 16. In her affidavit, Wiltz stated: 'We went around to all employees and told them we were giving Mona a surprise birthday party and wanted them to bring food or give money to buy food." *Id.*

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[9] Wiltz said that neither Myers nor Boutte gave her any of the money they collected. HT 3A.

[10] Wiltz reported that that there was not even enough money to pay for all of the food. HT 3A.

Crystal Boutte, a Mail Processing Clerk, testified that the appellant was her supervisor. She confirmed that she participated in the appellant's birthday party her mother gave the appellant some gifts, a journal, a Spa gift certificate, a gospel CD, and some yellow roses. She explained that, because of their close relationship with the appellant, it was customary for her and her mother to give birthday gifts to the appellant. She said that she left the gifts in the appellant's office. HT 3B.

Knatt stated that she did not believe that anyone was coerced to give the party for the appellant. She indicated that the employees were talking about giving the appellant a surprise party and she knew that some people offered to give money for food. She said that she does not know Daniel Greneaux[11] and she did not recall any discussion with other employees about the gifts she brought for the appellant. HT 3B.

Deidra Brown, an Automation Clerk, testified that, one day, she ran into Wiltz at the time clock and Wiltz mentioned that she was helping plan a party for the appellant. Brown said that Wiltz did not ask her for money or a

[11] During his testimony, Greneaux described the gifts that he saw at the party. Some of the gifts he described fit the description of the gifts that Knatt said she left in the appellant's office.

donation and she did not donate anything for the party. She stated that she did not feel coerced or influenced to attend the party and she attended the party. Brown reported that, on the day of the party, a safety or service talk was announced; employees went to the break room; and, following the meeting, the party was held. Brown reported there was soft music playing and the appellant opened some gifts, including, yellow roses, a CD, and some bath products. She stated that she did not see a gift list, nor did she hear about a gift list. She said that she was at the party for 30 minutes, but she was not there for the entire party. HT 3B.

Janell LaCombe, a Data Technician on Tour 2, testified that the first she heard of the appellant's birthday party was when the OIG investigation was initiated. HT 3B-4A. She confirmed that she told the OIG investigator about a birthday party that was held for the appellant but explained that the party she referenced was a previous birthday party held for the appellant in 2002 or 2003. LaCombe indicated that she thought that Campbell might have a grudge against the appellant because Campbell did not like the appellant.[12] When asked whether other employees at the GMF had a grudge against the appellant, LaCombe replied that she did not know. HT 4A.

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[12] Campbell is one of the employees who complained about the gift list circulated by the appellant.

Particia Harris, a Mail Processing Clerk, testified that Boutte invited her to the appellant's birthday party. She indicated that she did not go to the party because she was already off work when the party took place. She said that no one asked her for money or a donation and she did not feel influenced or coerced to attend the party. She said that she did not see a gift list and she did not hear about a gift list. HT 4A. In an affidavit that she provided to the appellant in support of this appeal, Harris stated, ".,.sometime around August 2005, Crystal Boutte, came to me while I was working at the Flat Sorting Machine 100 and asked me if I wanted to donate money or bring food to a surprise birthday party for Mona Pradier. ... She also told me Linda Myers and Shelia [sic] Wiltz were helping her organize the party." Appellant's Ex. E, AF Tab 17.

Michele Francis, a Flat Sorter Operator on Tour 3, testified that Boutte invited her to a surprise party for the appellant. Francis was not sure whether Boutte asked—her to contribute for the party, but she did not think she gave any money. She said that if she had given money for the party, she would have given $5 to Boutte. She confirmed that she gave an affidavit to the appellant that stated that she gave $5 for the party. *See* Appellant's Ex. G, AF Tab 16. Francis testified that she attended the party at the end of her shift for approximately 15 minutes and said that she did not feel coerced or intimidated into attending the party. Francis reported that the appellant's

birthday party was not the first party that was given at the agency, but she could not remember any other party that was given for a manager. HT 4B.

Rodney White, a Clerk on Tour 3, testified that Boutte or Wiltz told him about a surprise party for the appellant but they did not ask him to contribute for the party. White related that he did not see a gift list or hear about such a list. He said that he attended the party on his break and he did not feel coerced or influenced to attend or to donate. HT 4B.

The appellant testified that she was the Manager of Distribution and Operations (MDO) at that Lafayette GMF on Tour I. She confirmed that a birthday party was held for her in August 2005. She said that she first learned of the birthday party when she went into the break room and the employees yelled "Surprise". She stated that she was startled and appreciative that the employees cared enough to give the party. She related that supervisors decide when there are safety meetings and that one of the supervisors would have announced the safety meeting that night. She testified that she took care of the safety talk and then employees took a break for cake and drinks. She denied that she went around to gather employees who were not in the break room. She indicated that she did not recall any music or gifts at the party, but confirmed that Knatt, her godchild, brought some birthday gifts to her office after the party. The appellant stated, however, that she did not recall

showing anyone the gifts. The gifts included flowers, a journal, a CD, and a gift certificate for a spa. When asked how employees, such as Greneaux could know what gifts she received, the appellant suggested that Greneaux must have seen the gifts when Knatt had them. She reported that it is common to have parties for birthdays, tour changes, farewells, and other special occasions. She indicated that the employees use the break room and have "get togethers" during their break time. HT 4A.

The appellant stated that Falcon's allegation that she heard the appellant directing the other employees to organize the party was incorrect. The appellant explained that she had not been in the employee locker room in years and she has no reason to go into the employees' locker room. She stated that Falcon was mistaken in her identification. The appellant denied that there was a gift list; that she handed Campbell a gift list; or that Hargrave spoke with her about a gift list. The appellant said that she could not have sent a gift list out when she did not even know about the party. When asked why Hargrave would testify that they had such a discussion, the appellant replied that she believes that Hargrave wants the MDO job. Further, the appellant reported that she and Hargrave have had disagreements about how the appellant ran Tour 1. According to the appellant's testimony, she first learned about the allegation of a gift list from the proposal notice, which was issued more than a year after

the party. HT 4A.

The appellant denied that she instructed Myers, Boutte, and/or Wiltz to give or organize a birthday party for her. Further, she said that she did not organize her birthday party and not one witness testified that she told anyone about the party. She asserted that she could not have influenced or coerced any employee if she did not tell them about the party and if she did not know about the party. HT 4A.

Although various witnesses had different recollections of the party and the discussions that preceded the party, there is no dispute that a party was given for the appellant, a supervisor, by her subordinate employees; that the party occurred during work hours in the employee's; that a significant number of the employees on duty participated in the party; and food was served. Further, it is undisputed that some of the appellant's subordinate employees gave money for the party. In dispute is whether the appellant instructed her subordinate employees to give the party and whether she circulated a gift list.

The appellant is a manager with lengthy service and she is aware that organizing a party for herself is inappropriate. I find it unlikely that, if she wanted a party, she would have gone to all of her subordinate employees and told them that she was organizing a party for herself. I find it more likely that she would ask a few employees, whom she trusted, to

make the arrangements for the party and to get everything organized. Boutte, Wiltz, and Myers, each testified that they initiated the party and denied that the appellant instructed them to give the party. Despite the fact that they were the party planners, they denied that they "organized" the party; that they approached any other employees about the party, or that they requested donations from anyone. However, they also indicated that other employees gave money for the party. If their testimony is to be believed, no one organized the party. Without such organization, it is difficult to understand how the food, cake, punch, and supplies got to the party, how they knew there would be enough food and supplies for all of the employees who were invited, or how they planned to get the employees and the appellant to come to the break room at the appointed time.

With regard to who initiated the party, how it was organized, and what took place at the party, I find that the appellant's. Wiltz', Boutte's, and Myers' testimony was evasive and nonresponsive. Further, significant portions of Wiltz', Boutte's, and Myers' testimony is contradicted by the affidavits they provided to the appellant and by the credible testimony of other witnesses. Falcon credibly testified that she heard the appellant tell Wiltz and another employee that she wanted a birthday party. *See Hillen v. Department of the Army,* 35 M.S.P.R. 453, 458-62 (1987). Hargrave credibly testified that Wiltz told her that the appellant

instructed her to organize a party. Falcon's and Hargrave's testimony is consistent with the prior statements they provided to the OIG investigator. Falcon and Hargrave testified in a candid and straightforward manner, without evidence of evasion or prevarication. Although it was suggested that Hargrave wanted the appellant's job as MDO, there was no indication in the record that Falcon had any ill feeling toward the appellant or that she had any motivation to fabricate her testimony on this point. The appellant contended that she could not have coerced or influenced any employee's participation in the party because she did not talk with anyone about the party. Yet, such coercion could easily exist where employees who were thought to be her agents informed other employees of the party and sought "contributions." The fact that some employees did not feel influenced or coerced into attending or participating, does mean that other employees could not feel coerced.[13] Based on the evidence before me, I find that the agency established by preponderant evidence that the appellant used her position as the MDO to influence her subordinate employees to give her a birthday party.

Under its charge, the agency also

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[13] I have considered the testimony that parties at the agency were common. I note, however, that the testimony did not reflect that it was common for subordinate employees to give parties for higher level managers or for work in the facility to be shut down while a party was held.

alleged that the appellant provided a list of gifts that she wanted for her birthday. The appellant denied that she circulated a gift list or that there were any gifts at the party; yet, several witnesses, including those called by the appellant credibly testified that they saw the gifts opened during the party. *See* Testimony of Greneaux, HT IA; Floyd Jones, HT 1B; Hargrave, HT 2B; and Deidre Brown, HT 3B. Greneaux and Hargrave were able to describe the gifts, and the appellant's testimony confirmed that she received gifts which fit the descriptions provided by Greneaux and Hargrave. I find it unlikely that the witnesses could have provided such a description if they had not seen the gifts at the party. Further, the appellant's suggested explanation for Greneaux's knowledge of the gifts is contradicted by Knatt's testimony that she did not know Greneaux and she did not show the gifts to anyone. I find that the testimony of the witnesses establishes that gifts were opened at the party. Further, I find that the testimony about the existence of a gift list. from Campbell, Gallet, and Hargrave was more credible than the appellant's denial that the list existed. Campbell, Gallet, and Hargrave testified forthrightly, they were sure of their facts, and they described some of the gifts listed. Although there was some suggestion that Campbell or Hargrave might have some motive to lie about the gift list, there was nothing in the record to show that Gallet had any motivation to

lie. Moreover, additional support for Gallet's and Campbell's testimony is provided by the complaint that they made to Acting Supervisor Willis at the time the list was circulated. Based on the evidence before me, I find that the appellant gave some of her subordinate employees a list of gifts that she wanted for her birthday. The agency's charge of improper conduct is sustained.

The penalty of removal is reasonable and promotes the efficiency of the service.

An adverse action, such as removal, may be taken by an agency only for such cause as will promote the efficiency of the service. 5 U.S.C. § 7513(a). The Board has held that disciplinary action is warranted based on a sustained charge of improper conduct. *See Rivoire v. U.S. Postal Service,* 103 M.S.P.R., I 14 (2006). In assessing whether a particular penalty promotes the efficiency of the service, however, it must appear that the penalty takes reasonable account of all relevant mitigating factors in a particular case. *See Douglas v. Veterans Administration,* 5 M.S.P.R. 280, 299 (1981).

The appellant contended that the removal is too harsh. The appellant related that she has worked at Lafayette for 25 years and she has not been subjected to any recent discipline.[14] She said that she has had

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[14] The appellant reported that her last discipline was approximately 22 years ago.

good performance; she tried to set a good example; and she got along with her managers. The appellant asserted that the agency's action is improper. HT 4A.

Jerry LeDoux, Senior Plant Manager, Louisiana District, testified that he was the deciding official in this case. HT 2A. He said that he reviewed the charges and the report provided by the Office of Inspector General. LeDoux reported that the appellant submitted a written response to the proposal notice. He said that, in making his decision, he considered the nature and seriousness of the appellant's conduct and all of the relevant factors, including her position at the agency, her length of service, and the merits of the case. LeDoux related that, he considered the charge, that the appellant asked her subordinate employees to give the party, to be serious. He explained that, as the MDO, the appellant was responsible for ensuring that the mail was processed in an efficient manner. He indicated that, even if the employees had voluntarily organized the party, the matter was still serious because the party occurred while employees were "on the clock" and the time it occurred was a critical time for postal operations. LeDoux testified that it is irresponsible and inappropriate for a supervisor to solicit gifts from subordinate employees. He related that the appellant had twenty-five years of service and he believed that she was a productive employee. He opined that her birthday party had the

potential of creating a hostile work environment for those employees who did not want to participate, but felt forced to do so because of her position as a supervisor. LeDoux indicated that some of the employees who participated may have done so to get some favorable treatment from the appellant. LeDoux testified that the agency wants managers to treat all employees fairly. HT 2A.

LeDoux testified that he considered the *Douglas* factors, including the appellant's length of service, her work record, mitigating circumstances, and her potential for rehabilitation. HT 2A. He said that he thought about rehabilitation, particularly when her length of service was considered, but he concluded that there were mitigating circumstances because it was absolutely wrong for her to be having a party during the middle of operations with her subordinate employees on the clock. He stated that the agency cannot maintain the efficiency of the operation with such behavior. When asked whether there was any proof that the party occurred at a critical time of operation, LeDoux replied that any work stoppage interferes with processing the mail. He explained that there are deadlines to meet. LeDoux related that he believed that the appellant was aware of her responsibilities to the agency and to her subordinate employees, but she ignored those responsibilities by her behavior. He explained that her conduct affected the efficiency of the

service and could have long term effects because those employee who did not participate might perceive that they would receive negative treatment for their failure to participate. LeDoux testified that, based on the evidence presented to him, he concluded that the appellant engaged in conduct that constitutes a removal offense for a manager and he determined that the removal was warranted. HT 2A.

I have sustained the agency's charge. There are some mitigating factors in this case, which include the appellant's length of service, her good work performance, and the lack of any recent discipline. I find, however, that the sustained charge is serious particularly in light of the appellant's supervisory position. It is well-established that supervisors are held to a higher standard of conduct than other employees. *See Fischer v. Department of Treasury,* 69 M.S.P.R. 614, 619 (1996). I find that LeDoux properly exercised his discretion in determining that removal is an appropriate penalty in this case. Accordingly, I find that the penalty of removal is not unreasonable. When the agency's selection of a penalty is not unreasonable, it must be accorded deference by the Board. *See Beard v. General Services Administration,* 801 F.2d 1318, 1322 (Fed. Cir. 1986).

DECISION

The agency's action is AFFIRMED.

FOR THE BOARD: _____

Marie A. Malouf
Administrative Judge

NOTICE TO PARTIES CONCERNING SETTLEMENT

The date that this initial decision becomes final, which is set forth below, is the last day that the administrative judge may vacate the initial decision in order to accept a settlement agreement into the record. *See* 5 C.F.R. § 1201.112(a)(5).

NOTICE TO APPELLANT

This initial decision will become final on May 5, 2008, unless a petition for review is filed by that date or the Board reopens the case on its own motion. This is an important date because it is usually the last day on which you can file a petition for review with the Board. However, if you prove that you received this initial decision more than 5 days after the date of issuance, you may file a petition for review within 30 days after the date you actually receive the initial decision. You must establish the date on which you received it. The date on which the initial decision becomes final also controls when you can file a petition for review with the Court of Appeals for the Federal Circuit. The paragraphs that follow tell you how and when to file with the Board or the federal court. These instructions are important because if you wish to file a petition, you must file it within the proper time period.

BOARD REVIEW

You may request Board review of this initial decision by filing a petition for review. Your petition, with supporting evidence and argument, must be filed with:

The Clerk of the Board
Merit Systems Protection Board
1615 M Street, NW.,
Washington, DC 20419

A petition for review may be filed by mail, facsimile (fax), personal or commercial delivery, or electronic filing. A petition for review submitted by electronic filing must comply with the requirements of 5 C.F.R. § 1201.14, and mayonly be accomplished at the Board's c-Appeal website

(https ://e-appeal.mspb.gov).

If you file a petition for review, the Board will obtain the record in your case from the administrative judge and you should not submit anything to the Board that is already part of the record. Your petition must be filed with the Clerk of the Board no later than the date this initial decision becomes final, or if this initial decision is received by you more than 5 days after the date of issuance, 30 days after the date you actually receive the initial decision. If you claim that you received this decision more than 5 days after its issuance, you have the burden to prove to the Board the date of receipt. You may meet your burden by

fili ng evidence and argument, sworn or under penalty of perjury *(see 5* C.F.R. Part 1201, Appendix 4) to support your claim. The date of filing by mail is determined by the postmark date. The date of filing by electronic filing is the date of submission. The date of filing by personal delivery is the date on which the Board receives the document. The date of filing by commercial delivery is the date the document was delivered to the commercial delivery service. Your petition may be rejected and returned to you if you fail to provide a statement of how you served your petition on the other party. *See* 5 C.F.R. § 1201.4(j).

JUDICIAL REVIEW

If you are dissatisfied with the Board's final decision, you may file a petition with:

The United States Court of Appeals
for the Federal Circuit
717 Madison Place, NW.
Washington, DC 20439

You may not file your petition with the court before this decision becomes final. To be timely, your petition must be <u>received</u> by the court no later than 60 calendar days after the date this initial decision becomes final.

If you need further information about your right to appeal this decision to court, you should refer to the federal law that gives you this right. It is found in Title 5 of the United States Code, section 7703 (5 U.S.C. § 7703). You may read this law, as well as review the Board's regulations and other related material, at our website, http://www.mspb.gov. Additional information is available at the court's website, www.cafc.uscourts.gov. Of particular relevance is the court's "Guide for Pro Se Petitioners and Appellants," which is contained within the court's Rules of Practice, and Forms 5, 6, and II.

NOTICE TO AGENCY/INTERVENOR

The agency or intervenor may file a petition for review of this initial decision in accordance with the Board's regulations.

CERTIFICATE OF SERVICE

I certify that the attached Document(s) was (were) sent as indicated this day to each of the following:

	Appellant
U.S. Mail	Mona Pradier 222 Angelloz Street Lafayette, LA 70501
	Appellant Representative
U.S. Mail	Albert Lum, Esq. Scialla Associates 5240 72nd Place Maspeth, NY 11378
	Agency Representative
Electronic Mail	Paul C. Wolf, Esq. United States Postal Service P.O. BOX 227078 DALLAS, TX 75222-7078

March 28, 2008
(Date)

Sharon D. McDaniel
Paralegal Specialist

OFFICE OF LABOR RELATIONS
LOUISIANA DISTRICT
NEW ORLEANS, LA 70113-9401

DATE: June 8, 2007

OUR REF: SWCS:&S:LD:HR:JL:TBA:tba:9401

SUBJECT: Letter of Dcision (Rescinding)

Mona Pradler
***-**0095
Manager, Distribution Operations
Lafayette, LA. 70501-9998
Mail to:
222 Angelloz Street Return
Lafayette, LA. 70501-4204

Certified No 70028450000091007652
Receipt Requested
Delivery Conf No 03041560000650449201

On June 4, 2007, I forwarded to you the Postal Service's Letter of Decision, which informed you of my decision to remove you from the Postal Service. Subsequent to my sending the Letter of Decision to you, it came to my attention that you submitted a written response to the March 28, 2007 Notice of Proposed Removal Therefore, I am rescinding the Letter of Decision pending my review of your written response. You will receive a final decision from me after my review of your written response.

_____

Signature of Deciding Official Date

_____

Name of Deciding Official (printed) Date

DATE: June 4, 2007

OUR REF: SWCSAS:LD:HR:JL:TBA:tba:9401

SUBJECT: Letter of Decision

Mona Pradier
***-'0095
Manager, Distribution Operations
Lafayette, LA 70501-9998

Mail to:
222 Angelloz Street
Lafayette, LA, 70501-4204

Certified No 7002 3150 0000 90994274
Return Receipt Requested
Delivery Confirmation No 0301 0120 0001 1244 7310

On March 28, 2007, you were issued a notice proposing to remove you from the Postal Service based on the charges outlined in that notice.

The notice of Proposed Removal provided an opportunity for you and/or your representative to respond to the charge as specified in the notice. You were instructed to make your response directly to me within ten days of your receipt of the notice. You also were given an opportunity to furnish affidavits or other written material for my consideration.

In addition, you were given the option to request mediation with the assistance of an outside mediator appointed by the Federal Mediation and

Conciliation Service which you requested. You were sent a letter via delivery confirmation #03051720000192149453 from the Southwest Area 650 Facilitator, Willie Mayfield, advising you that the mediation office would not be able to provide mediation for you since being informed that you had been advised by your doctor that you cannot currently attend mediation. You were also advised in the letter, that you had ten (10) days from the receipt of the letter to appeal the proposed action to the deciding official as outlined in the Notice of Proposed Removal. Postal records reflect that the letter was delivered to your address of record on April 30, 2007.

It is noted that you did not make a verbal or written response to the Notice of Proposed Removal nor has your representative contacted me. I find, however, that the charge as written in the Notice of March 28, 2007, is fully supported by the evidence and warrants your removal from the U. S. Postal Service.

I have considered the nature and seriousness of the offense, it's relation to your duties, position and responsibilities and your twenty five years of service. You used your position to influence employees under your supervision to give you a birthday party. You also submitted a list of gifts you wanted employees under your supervision to buy for you. You had an opportunity to explain your actions but you would not do so stating" I'm out of here". Reporting agents attempted to meet you at your home on several occasions and you did not answer the door. Your unavailability to explain your actions speaks to your ability to take

responsibility for your actions. I have also considered your job level,. including your supervisory role and the prominence of your position. Your position as a manager requires you to manage and supervise the work of employees and to promote the efficiency of the operation. Your actions have served to undermine any level of trust that you can perform the duties of your job with your employees or with the general public. I have lost confidence in your ability to be an honest, effective Postal employee. You were fully aware of postal rules and regulations and that you are prohibited from: engaging in conduct that reflects negatively on the Postal Service.

Your misconduct constitutes a clear reach of agency regulations requiring managers to be responsible for the daily operation of the unit and to serve as an example to their employees. You are also responsible to ensure the efficiency of the operation. Any action short of your removal would erode the basic employer-employee relationship and seriously damage the reputation of the United States Postal Service. There are no mitigating circumstances that would warrant a lesser action. Your failure to properly perform your managerial duties was unwarranted. There are similar instances of misconduct that have been dealt with in like fashion, therefore; I find the charge as stated in the Notice of March 28, 2007 Proposal if fully supports and warrants your removal from the Postal Service.

In reaching my decision, I have considered the nature and seriousness of the offense, its

relationship to your duties, responsibilities, your job level, your length of service, your past work record, the possibility of rehabilitation, lack of mitigating factors, and the consistency of the penalty assessed.

The removal will be effective close of business Friday, June 9, 2007.

You have a right to appeal this decision in writing to the Merit Systems Protection Board (MSPB), 1100 Commerce Street, Room 620, Dallas TX 75242-9979 within 30 calendar days form the effective date of this decision. Your appeal to the MSPB should state whether you do or do not wish a hearing and you should furnish me a copy of your appeal. For further information on appeals procedures, contact Toni Andry, Labor Relations Specialist (A), 8101 Bluebonnet Blvd, Baton Rouge, La. 70826-9401 at 225= 763-3777. Attached for your reference are a copy of the MSPB regulations and a copy of the appeal form.

If you believe that this action is based, in whole or in part, on discrimination, you have the option of filing an appeal with the MSPB or filing an EEO complaint with the Postal Service, but not both. Before filing an EEO complaint, you must bring the matter to the attention of an EEO counselor by calling 888-EEO-USPS within 45 days of the effective date of this decision. The EEO complaint will be processed pursuant to the appropriate regulations (29 CFR Section 1614.302 through 1614.310).

If you file an MSPB appeal, you are not entitled to a hearing by the Equal Employment Opportunity

Commission (EEOC) unless:

- Your appeal to the MSPB is dismissed for lack of jurisdiction, or
- The Postal Service fails to issue a final agency decision on your EEO complaint within 120 days of the date you filed your EEO complaint.

You may request a hearing by the MSPB after the Postal Service has rendered a decision on your EEO complaint or after 120 calendar days from the date of filing your complaint, whichever occurs first.

If you appeal this action, you will remain on the rolls, but in a non — pay, non — duty status after the effective date of this action until disposition of your case has been reached either by settlement or through exhaustion of your administrative remedies.

If this action is reversed or modified on appeal, back pay may be allowed in accordance with 5 CFR Section 550.801 *et. seq.*, as applicable, unless the award or decision specifies otherwise.

_____

Signature of Deciding Official Date

_____

Name of Deciding Official (printed) Date

OFFICE OF LABOR RELATIONS LOUISIANA DISTRICT
NEW ORLEANS, LA 70113-9401

DATE: March 28, 2007

OUR REF: SWCS:&S:LD:HR:MAG:TBA:tba:9401

SUBJECT: Notice of Proposed Removal

Mona M. Pradier
***-**-0095
Manager, Distribution Operations
Lafayette, La. 70501-9998

Mail to:
222 Angelloz Street
Lafayette, La. 70501-4204

Certified No: 7099 3400 0005 9193 4548
Return Receipt Requested
Delivery Confirmation No: 0304 0370 0000 2192 8054

This is advance written notice that it is proposed to remove you from the U S Postal Service no sooner than 30 calendar days from your receipt of this notice.

This action is based on the following:

CHARGE: You are Charged with Unacceptable Conduct

SPECIFICATION:
You did, on pr about August 2005, use your position to influence employees under your supervision to give you a birthday party. You also submitted a list of gifts you

wanted employees under your supervision to buy for you. You failed to conduct yourself in a manner that reflects favorably upon the Postal Service..

Background: As a Manager of Distribution Operations, you are responsible to direct employees in the performance of their postal duties. You are prohibited from engaging in any conduct that reflects negatively on the Postal Service. Despite these responsibilities, you failed to conduct yourself in a favorable manner in accordance with the ELM, when you influenced employees under your supervision to give you a birthday party while on the workroom floor.

On August 2006, the Office of Inspector General was contacted by Lead Plant Manager Carolyn Chambers to investigate the conduct of Mona Pradier. Employees of the Lafayette GMF reported to Postal Management that Pradier directed her employees to give her a birthday party at the Lafayette GMF. It was also alleged that Pradier passed around a list of gifts she wanted employees to buy her as birthday presents.

During the month of August 2006, between the 10th and the 18th, several employees at the Lafayette GMF were interviewed by Special Agent Brandon Tullier. Those employees are listed in the investigative report and they agree that money was collected for a birthday party given for you and that employees were expected to attend during the hours of operation.

on September 1, 2006, Agent Damona Veach attempted throughout the day to interview you three (3) separate times at your residence. The first two times there were no vehicles in the driveway and no one came to the door when agents knocked. The third time your vehicle, a white Mitsubishi Galant bearing La license plate MZE882, was parked in the driveway. Agent Veach knocked on the door multiple times and rang the doorbell and no one came to the door.

On November 7, 2006, agents again attempted to investigate you when you returned to work after an absence of approximately two months. You refused to speak to agents and asked for your shop steward, Harold Harrison, who is on extended sick leave and who was unavailable. You asked if the interview was voluntary and if you could leave. Agent Tullier advised that the interview was voluntary and you responded "I'm out of here". Before leaving you handed a sick leave request tb (A) Plant Manager Nickolas Piazza stating that you would be out indefinitely. A supplemental report of your alleged misconduct was submitted to Nickolas Piazza by the Office of Inspector General on November 8, 2006.

You were instructed via delivery confirmation mail #03052710000191617106 to report to the Lafayette GMF for an investigative interview on December 14, 2006 at 11:00 a.m. Postal records reflect that you received the letter at your address of record on December 8, 2006. You sent

a letter dated December 18, 2006 stating that you could not attend because you had a doctor's appointment scheduled for the same date.

You were again instructed via delivery confirmation mail #03052710000191617083 to report to the Lafayette GMF for an investigative interview on December 18, 2006 for 11:00 a.m. A letter was received from your attending physician stating that you were unable to work and attend meetings that were job related. You have not offered an acceptable response concerning the allegations regarding your conduct. Therefore, you are charged accordingly.

On February 12, 2007, reporting agents interviewed several additional witnesses in regards to allegations of your misconduct. An additional supplemental report was submitted to Nickolas Piazza on February 13, 2007.

Your position as Manager, Distribution Operations, requires you to direct employees in the performance of their official duties. You have compromised the efficiency of the Postal Service by using Our position to coerce employees under your supervision to contribute to
and attend a birthday party held in your honor at the Lafayette GMF. The charges are serious and clearly warrant the imposition of discipline. Your misconduct clearly impacted the efficiency of the service. The daily operation of the unit is a management responsibility. You have the responsibility to inform employees when warranted, and to administer appropriate

corrective discipline, on an impartial basis to all employees, for the efficient operation of the Postal Service. Likewise, you are required to adhere to the same policies and procedures.

This Proposed Notice of Removal is being issued to you based upon the above cited deficiencies. Furthermore, you must demonstrate adherence to Postal service regulations.

You and your representative may review the material relied on to support the reasons for this Proposed Notice of Removal, at Labor Relations, 8101 Bluebonnet Boulevard, Baton Rouge Louisiana between hours 8:30 a.m. — 3:00 p.m. If you do not understand the reasons for the Proposed Notice of Removal, contact Ms. Toni Andry in Labor Relations, at (225) 763-3777, for a further explanation.

You and/or your representative may do either two things at this point. You may request that the issues involved in this Notice of proposed removal be mediated with the assistance of an outside mediator appointed by the Federal Mediation and Conciliation Service. If you wish to take advantage of this option, which is an alternative to your right to respond to the deciding official as outlined in ELM 651.64, you should make your request in writing within ten (10) calendar days of the date of the receipt of this proposal. For your convenience, enclosed in a Request for Mediation from you may use for this purpose. After completing the form (or your written request), it must be sent to:

ADR Coordinator
Southwest Area
P Q Box 223863
Dallas, TX 75272 — 3863

If you choose not to request mediation, you and/or your representative may appeal this Proposed Notice of Removal filing an answer within ten (10) calendar days from your receipt of this letter, either in person or in writing, or both, before Jerry LeDoux, Senior Plant Manager, 8101 Bluebonnet Blvd, Baton Rouge LA 70826 between the hours of 8:30 a.m. and 3:30 p.m. You may also furnish affidavits or other written material to Mr. LeDoux within ten (10) calendar days from your receipt of this letter. You will also be afforded a reasonable amount of official time for the above purpose if you are otherwise in a duty status. You will receive a written decision after the expiration of the ten (10) calendar day period for reply. All of the facts in your case, including any reply you submit, will be given full consideration before a decision is rendered.

If you initially request mediation and no satisfactory resolution of the matter is achieved, you must submit your written response to the deciding official within ten (10) calendar days of the date of the mediators letter indicating that no agreement was reached in the mediation.

03/28/07

Nickolas S. Piazza, Sr.

Plant Manager
Lafayette LA 70509-9998

Q. And how do you know her?

A. She's my -- or, was my supervisor in the - (indiscernible) supervisor.

Q. Okay. Now, did you -- do you recall a birthday party given in August of 2005 for Ms. Pradier?

A. Yes, I do.

Q. Now, can you tell us, prior to the party, how did you learn of it?

A. It was rumored around the floor. And Crystal Boutte told me that her birthday was coming up and that we were considering giving her a little party.

Q. Okay. And what else was asked of you, if anything?

A. That was -- that was it.

Q. Did Ms. Pradier ever approach you regarding the birthday party?

A. No.

Q. Now, did -- it has been -- it had been stated that a gift list was passed around. Did Ms. -- Ms. Boutte or Ms. -- Ms. Myers ever approach you with a gift list?

A. No.

Q. Did you ever see a gift list?

A. No.

Q. Did you ever hear about a gift list?

A. No.

Q. Okay. Now, did you attend the party?

A. Yes,

Q. Now, well, let me ask you, did you contribute to the party? Do you recall?

A. I don't recall contributing to the party, but, you know, as employees we sometimes give each other birthday parties or .- or recogni4o -- and someone cooks. So you know, someone has to pay for it, $o if we're asked to give five dollars or what have you, in order for to pay H for the food, you know, I usually do. So, I don't remember whether I did or didn't or someone -- z don't remember anybody asking me to you know, to contribute any money.

Q. So -- so you -- you would consider that voluntarily, would -- would you not? If you wanted to give something or not?

A. Right. It's always been voluntary.

Q. Now, did you attend the party?

A. Yes.

O. Okay. And how wag the party -- how -- how were people gathered to the party, do you recall?

A. There was an announcement for some type of meeting, and when everybody got in, it was said that, when Mena comes in, we're going to sing, tell her, you know, happy birthday. And that was it.

Q. And was M. Pradier surprised?

A. Yes.

Q. She wasn't aware that there was a party going on?

A. I don't think $9, because she came in with a - a rolled up papers, you know, like a safety meeting like we usually have, a safety meeting. She comes in with a rolled up paper for a safety talk. And someone else had set up, you know, the place and a birthday cake. So -

Q, Now, do you recall if gifts were given at the party or not?

A. No.

Q. How long did the party last approximately?

A. Roughly about 30 to 40 minutes. our lunch time, and break.

Q. And do you -- during the -- is this -- well, during this party, was -- was -- do you believe the operation was disrupted?

A. No, it was on a light night. We have certain days during the week that we have light nights and – and and heavy nights. And -- and this happened to be one of the light nights.

Q. And what happened after the party, if anything?

A. 1 just went back to work.

A. Yes, I did.

Q. Can you tell us how this came about?

A. Well, it came about in a conversation that she had an upcoming birthday, so me and my girlfriends, Crystal Boutte and Sheila Wiltz, we decided to have a surprise birthday party for Mona.

Q. Okay. Now, what part did you play?

A. -I prepared some food and helped serve some food and stuff.

Q. Anything else?

A. Basically -- well, I mean, I helped organize this.

Q. Did you go around to employees and ask for donations?

A. No. It -- the way that we did it was by word of mouth, we got some -- we told the employees that if they wanted to donate money for the food, that they could. And that, you know, whoever wanted to give, they gave it to us.

Q. Okay. Now, you say you had this conversation. Who was -- who was there at this conversation?

A. Sheila and Crystal.

Q. Okay. So you three decided to possibly have a -- organize a party for Ms. Pradier; is that correct?

A. Yes. I mean, it was a get-together yes, right.

Q. Okay. Is this common at your facility?

A. Yes, it is.

Q. And is this and is this common just for management employees?

A. No, it's not. For our friends or whatever, you know, we do it on our break or our lunches, you know, like that.

Q. Did you -- did you ever go around while organizing the party and try to coerce employees to participate?

A. No.

Q. Did you try to influence in any way using Ms. Pradier's name to influence employees to participate or donate?

A. Okay. So what -- now, it's been said that a gift list was passed around.

A. I did not see a gift list.

Q. But was there a gift list'?

A. I did not see one.

Q. Okay.

A. I'm sorry. I know I'm shouting.

Q. So did you pass -- so you didn't pass around a gift list?

A. No, sir.

Q. Okay. Now, at the party, can you tell us what

happened at the party?

A. At the party, to my -- to the best of my recollection, I think we had a meeting before that, it was a, I think, a little safety meeting, and it was after that that we -- we started, you know, with the little get-together.

Q. And it was stated that there was music and dancing at the party. Is that true?

A. No. Not that I recall, no.

Q. And were you there for the entire party?

A. There is never -- there is never dancing at none of those things. It's just -- I mean, it's just -- it's never done. Okay?

Q. Thank you. Now, gifts, were gifts -- did you observe Ms. Pradier opening gifts at this party?

A. No, I did not.

Q. Okay. What happened after the party?

A. After the party, everybody went back to work.

Q. And approximately how long did this -- this event last?

A. I would say about, oh, about 20, maybe 30 minutes.
Q. Okay.

MR. LUM: No other questions.
JUDGE MALOUE: Cross?

JUDGE MALOUF: All right, Ms. Wiltz. I'm Judge Malouf, I'm going to be making a decision in this case. Both Mr. Lum and Mr. Wolf are going to be asking you questions. Please respond to those to the best of your ability. If you don't understand the question, let them know, they'll rephrase it. When you're through testifying, we'll let you go, but you're instructed not to discuss your testimony with anyone until after the hearing concludes.

THE WITNESS: Okay.

JUDGE MALOUF: Mr. Lum, you have direct. MR. LUM: Thank you, Your Honor.

DIRECT EXAMINATION
BY MR. LUM:
Q. Good afternoon, Ms. Wiltz.

A. Hi.

Q. Can you state your position with the Postal Service?

A. Clerk.

Q. And how many years are you with the Post Office?

A. Since 1997.

Q. Now, are you personally -- back in August of 2005, where did you work?

A. At the Post Office on Moss Street.
Q. And is that where you work now?

A. I'm presently at Bertrand Station.

Q. Okay. Now, do you know Ms. Mona Pradier?

A. Yes, I do.

Q. And, I'm sorry, could you speak up?

A. Yes, I do.

Q. I don't think the Judge can--

A. Oh, I'm sorry.

Q. And how do you know Ms. Pradier?

A. Mona was the MDO at the Post Office when I was

Q. And what tour did you work when you were there?

A. Tour one.

Q. Now, do you recall a birthday party given for Pradier back in -- sometime in August of 2005?

A. Yes.

Q. And did you help organize this party?

A. Yes, I did.

Q. And can you explain to us how this came about?

A. Well, through the grapevine I heard that Mona's
Q. Now, can you tell us, what did you do to this?
A. Well, we just, you know, told different people-- I mean, the people at the Post Office, employees, that we were going to give Mona a surprise birthday party and that if they wanted to like donate food, donate, you know, whatever they

wanted to donate, that it was going to be okay to help us with the party.

Q. Now, did you -- were you around organizing the party, inviting employees to participate in the party, did you in any way coerce or influence these employees to participate or donate to this party?

A. Oh, no. No. The only thing was said was that, you know, Mona's birthday is coming along and we decided to give her a surprise birthday party. Mona didn't even know about the party. We decided to give her a surprise birthday party and if they wanted to donate, whatever they wanted to donate, you know, they (indiscernible), if they want to donate money, the food, you know, whatever for the party.

Q. Now, you just stated that -- that Ms. Pradier didn't know anything about the party. There was testimony at this -- today at this hearing that it was Ms. Pradier who instructed you, Ms. Boutte, and Ms. Myers to give her a party.

A. Oh, no. Not even. No. Mona did not know about this party. This was a surprise birthday party for her.

Q. And -- and -- and Ms.is this uncommon at the Lafayette facility?

A. No, it's not.

Q. Could you explain?

A. There's -- I mean, there's many parties that be given, you know, when somebody gets another job or, you know, go like on different tours we give parties. You

know, there's other managers that people give parties for. I mean, Mona's the first person -- or the first supervisor that ever had a party, and this party was a surprise birthday party. Mona did not even know about the party.

Q. Now, we also said that there was a gift list 13 that was being passed around. Do you know anything about this list?

A. No. I've never seen a list.

Q. Has anyone ever shown you a list or confronted you, said, what's this?

A. No, sir.

Q. Now, at the party, how -- how did everybody - well, how were the people gathered to the party? Do you remember that?

A. Well, I think somebody said -- well, somebody mentioned on the intercom that there was going to be a safety meeting, and after the safety meeting then that's 25 when we're going to, you know, have our little party or then, Mr. Lum, you've got direct.

THE WITNESS: Mona Pradier, P-r-a--d-i-e-r. JUDGE MALOUF: All right, Mr. Lum, you've got direct.

MR. LUM: Thank you, Your Honor.
DIRECT EXAMINATION
BY MR. LUM:
Q. Ms. Pradier, what position do you hold with the Postal Service?

A. I'm currently the MDO, that's Manager of

Distribution and Operations.

Q. And how many years of service do you have with the Post Office?

A. 25.

Q. And where do you work?

A. Processing and distribution facility, 1105 Moss Street, Lafayette, Louisiana.

Q. And what are your hours of duty?

A. Tour one, anywhere from 10:00 p.m. to 10:00 a.m.; whatever my manager tells me.

Q. So -- so you -- so you can work all hours?

A. Yes. Yes.

Q. Now, you heard testimony regarding the birthday party. When did you first -- back in August of 2005, was there a party held for you?

A. Yes.

Q. And can you tell -- can you tell us when you first learned of this party?

A. I first learned of it when I walked into the break room.

Q. And what happened at the party, do you recall?
A. I walked into the break room and everyone yelled Surprise, and I was kinda, you know, startled. And very appreciative that they cared enough to attempt to, you know, do this. But the first thing I told them was, after

the safety talk, y'all got to use y'all break.

Q. So -- so -- so you took care of the safety talk first; is that correct?

A. Yes. Yes.

Q. And at the party what do you recall what was there, what entertainment, if any; what refreshments, if any?

A. I don't remember the exact food, but there was a cake, there was something to drink. There's usually always a cake and something to drink. I don't recall any music.

Q. Okay.

A. At the party.

Q. Now, during the party, you heard witnesses testify, that you went around -- or it was alleged that you went around gathering employees who did not come. Is that true?

A. No, I didn't go around gathering employees that did not come. What happens is, when there's a safety meeting -- first of all, the supervisors decide when they're going to have a safety meeting, because they know their operations. So if volume is heavy, they're not going to have the safety meeting. But I can only assume that volume wasn't heavy, so they decided on a safety meeting, and one of them made the announcement.

Q. Oh, so you did not make the announcement?

A. I did not make the announcement.

Q. Do you know who did?

A. No, but it's only a supervisor that would do it, but I don't know which supervisor did.

Q. And is that through the phone system?

A. Through the loud -- yes, over the phone system, the loudspeaker.

Q. Now, after the party, were there any gifts at the party, do you recall?

A. I don't recall gifts at the party or like opening up gifts or anything like that. I don't recall that, no.

Q. But did you receive gifts at some point in time?

A. Oh, yes. Bethany brought me some gifts.

about organizing a party for -- for you.

A. No, that's incorrect. First of all, the employees entered through one end of the building and they go to the locker room. I don't -- I haven't been in that
locker room in years. I enter through another end of the building nearer my office and there are bathroom facilities and I have my own office; I keep everything in my office. I have a refrigerator, microwave, I mean, don't have a reason to go to the employees' locker room unless it would have been to assist an employee with a problem.
So you believe that Ms. Falcon was mistaken that she overheard you?

A. I think she was mistaken that she heard me, yes.

Q. You also heard Ms. Hargrave testify that she -- regarding some kind of gift list; do you remember what that was?

A. They mentioned a gift list. I did not submit or give, circulate, pass around, anything a gift list. I didn't even know about the party, so I would not have

Q. Ms. Hargrave claims in her testimony that at some point in time that you came to her or she -- or you met somehow and you took the list from her.

A. No, that's incorrect. Ms. Hargrave never came to me with anything about a gift list.

Q. Why would she say that? I mean, do you know?

A. Well, Ms. Hargrave would like to be the MDO. You know, management within the Postal Service is a competitive field. You know, to be a supervisor, from a supervisor you move on to a MDO, possibly a postmaster.

Most people's ultimate goal is to get to a station or work day time. So my personal opinion is that she would like to have had my job. I mean, we've had disagreements over how I run the tour.

Q. Okay. Now, Ms. Sandra Campbell, you heard her testify that you -- when you passed some point in time, you know, prior to the party, that you handed her a piece of paper.

A. Uh-huh.

Q. Do you recall that?

A. I don't recall that. I don't recall handing her a piece of paper or -- I mean, I interact with employees, but I didn't -- I don't recall handing her a piece of paper that would be a gift list.

Q. When did you -- when did you first learn of this -- of this gift list?

A. I first learned of the gift list when I read it in the, um--

Q. This--

A. Well, when they first sent me the letter of proposed removal. Because before the proposed removal, I didn't have any of the documents, when I first read the proposed removal.

Q. So you didn't know -- you didn't know it you didn't know anything about this until--

A. No. Until then.

Q. Until over a year later?

A. Over a year later. Well, actually it was a year and a half. The proposed removal letter was in April of '07.

Q. Now, you know Ms. -- Ms. Wiltz, Ms. Boutte, and Ms. Myers; do you not?

A. Yes.

Q. At any point in time did you instruct those employees to give you a birthday party?

A. No, I did not instruct them to give me a birthday paTty.

Q. Did you ever instruct them to organize a birthday party for you?

A. No, I never instructed them to organize a birthday party for me.

Q. You heard employees from the Agency testify that you organized the party, you instructed these employees. Is there any truth to that?

A. No, there's no truth to that.

Q. Why would they think that, do you know?

A. Speculation, assuming in the Postal Service, like many of them testify, you don't even have to know any facts, if a few people start talking about something, you know, it's all around the Post Office. And there are, you know, groups of people that I'm gonna say, let me see the word, hang around together or break together, lunch together, because they were all working the same machine, and, you know, they're in one spot in the break room, another group of people is in one spot in the break room. I heard somebody testify the smokers are outside on the break. So -- and any of those situations, employees talk, talk about, you know, whatever, their day, their plans their families, and if a few people, you know, decide something, and, you know, then the other people go to the workroom floor and spread the word around.

Q. Now, how long have you actually worked at the 19 Lafayette Post Office?

A. 25 years.

Q. Your whole career. Now, during that -- and you held a craft position and a supervisory position, correct?

A. Yes, I started out as an MPLSM operator. And from there I was promoted to SDO, and from SDO to MDO.

Q. And during your career, your tenure there at the Lafayette, was it common to have parties -- well, to have affairs for employees?

A. Yes.
Q. Events?

A. Yes, it is common. Before I was even the MDO, the previous MDO, the previous plant manager, manager processing and distribution, through the years they've held different titles. The -- in the Postal Service, whether it was a birthday, even when people traveled between tours, if someone was working at the plant but leaving to go work at a station -- there was this one girl who got married -- who was getting married and moving to Maryland, the employees get together, they plan to use their break time, they bring food, cook food, buy food, and all get together in the break room. This is common. Management has done it in the same way for employees at 17 Christmas. Every year we provide a Christmas party for the employees.

Q. Uh-huh.

A. The employee -- the Postal Service pays a certain amount, and the employees, I'm going to use for example, Christmas, Postal Service might pay $500.00 to buy a turkey. And some of the employees will complain, we don't like turkey, we don't eat turkey, we want gumbo. So those employees are going to get together, whether they specifically go to every individual? No, they don't do that, they just, you know, get together, hey, Greg, you want to cook a gumbo for Christmas? Yes. And then other employees when they passing by -- I'm going to use -- I use Brad because he's a mailhandler and he drives a forklift. He's passing by automation, Greg, you gonna cook the gumbo for Christmas? And they'll donate or they'll bring soda, chips, whatever they want to eat. But this is common in the Lafayette Post Office. I can -- in the last -- well, I have not been at work for over a year, but I can say in the last year that I even have not b-e-en these parties are still going on. Now, when they have

these parties, you know, prior to your administrative leave from -- from -- from the Lafayette facility, let's say they were going to have a birthday -- let's say it was my birthday and they were going to have a party. Do they need permission; do the employees who wanted to have the party for me, let's say, it was my birthday, did they have to go to the manager, the MDO or supervisor to get permission to do this?

They didn't need permission because this was done on their breaks, so they didn't need permission to -- because we've always allowed them to do whatever on their own 15 minutes break. We work tour one, we're at night, so. And Lafayette is .a small town, it's not like on your lunch break you could leave and go get something to eat. There is nothing, there is nowhere. So people either bring their food, but...

On their lunch break, same thing, they got the right to leave the facility. On their 15 minute breaks we let them do, I mean, whatever. When I say whatever, within reason. They can't leave the facility, we don't want them to go to their cars.

We prefer they go in the break room, take their 15 minute break and then come back to work. So, no, they would not have needed permission, because that was their -- their time.

Q. And would you say this was the policy at the Lafayette even prior to your promotion to MDO and to supervisor?

A. Prior to my position of MDO, prior to my position as supervisor, and still now, today. If tonight they go to work, tour one, tour three -- I'm gonna use for example the -- a machine called a flat sorter 100 and a flat sorter 1000. Those two machines are operated by five people per. But -- and they always shut those machines down at the same time, when it's time for break. So those people are always

on break together, same time. And because it's automated equipment, there are scheduled break, so every two hours they're going on break. So these people know every two hours we going on break. They'll talk about tomorrow I'm cooking red beans, you know? Oh, you going to bring some red beans? I'll tell you what, I'm gonna stop by Popeye's and get some chicken.
And they'll stop. And another person will say, you know, what, I'm gonna bring the Coke. When it's break time, they rush to the break room, warm up they food, sit down and eat, and then get bad to work. So they wouldn't need permission for that. If they decided, you know what, instead of fried chicken, I'm bringing a birthday cake, you know, oh, don't tell Mr. Wolf anything, you know, it's his birthday, you know, coming up this month. They don't keep them by specific days, they do 'em, you know, okay, who's this month. They would bring it and they would do it on their break.

Q. Now, prior to this disciplinary action that you were issued, have you had any prior disciplinary action?

A. No, I have not.

Q. In 25 years, no prior action?

A. I had prior action, oh Lord, 22 years ago.

Q. You were a craft employee?

A. When I was a craft employee, I had prior discipline.

Q. And what was your performance rating, do you recall?

A. My performance was excellent. I need a minute, because... I've done said that after 25 years of dedicated service, the best they could do is remove me. No one

offered me anything. Mr. LeDoux never offered -- he didn't offer my representative because I did not designate anybody to be my representative until I met you.

JUDGE MALOUF: Well, right.

A. I have been on medical—

JUDGE MALOUF: Why don't--

A. --from the Post Office.

JUDGE MALOUF: Why don't you stop. We'll go off the record real quick.

[OFF THE RECORD]
[ON THE RECORD]

A. All right. In my 25 years, I've always tried to set an example. I come to work as scheduled. I have always received a favorable evaluation. I haven't been disciplined, like I said, in 22 years. And to show an example to the employees of dedication, for ten years I did not even use any sick leave. Every year I'd tell 'em, that's my goal, no sick leave this year. And I told them my goal is for ten years. For ten years I did not even use a day of sick leave. So always favorable. Got along with every manager that I had. So I would say I was very good and dedicated employee.

Q. [BY MR. LUM:] Do you feel that the action, you know, the decision the Post Office made was justified?

A. I don't feel it was justified. I don't feel it was justified because removal is too harsh. It's if it's anything they've always told me as a manager, discipline should be corrective in nature rather than punitive. Because I've been the deciding--official on dkacdpline

myself, and that's the one thing they'd always drill in our head was to be corrective in nature. And I feel this was punitive.

Q. Do you feel that the charge -- well, let me take that back. They charged you with influencing, coercing employees to give you a party. Do you feel that you have committed that --- those -- those infractions?

A. I have not committed those infractions. No employee here said that I told them about the party. never told anyone about the party, so I could not have coerced them if I didn't tell them about it, if I didn't know about it. No, I did not coerce any employee.

Q. Thank you.
MR. LUM: I have no more questions, Your Honor.

JUDGE MALOUF: Cross, Mr. Wolf?
MR. WOLF: Yes.

OFFICE OF LABOR RELATIONS
LOUISIANA DISTRICT
NEW ORLEANS, LA 70113-9401

Date: July 13, 2007

Our Ref: SWCS:&S:LD:HR:JL:TBA:tba9401

Subject: Letter of Decision

Mona Pradier
***_**0095
Manager, Distribution Operations
Lafayette, LA. 70501-9998

Mail to:
222 Angelloz Street
Lafayette, LA. 70501-9998

Certified No: 7002 3150 0000 9099 4304
Return Receipt Requested
Delivery Confirmation No: 0301 0120 0001 1244 7334

On March 28, 2007, you were issued a notice proposing to remove you from the Postal Service based on the charges outlined in that notice.

The notice of Proposed Removal provided an opportunity for you and/or your representative to respond to the charge as specified in the notice. You were instructed to make your response directly to me within ten days of your receipt of the notice. You also were given an opportunity to furnish affidavits or other written material for my

consideration. I received your written response dated May 8, 2007. You acknowledged celebrating your birthday with your employees during a service talk.

In addition, you were given the option to request mediation with the assistance of an outside mediator appointed by the Federal Mediation and Conciliation Service which you requested. You were sent a letter via delivery confirmation #03051720000192149453 from the Southwest Area 650 Facilitator, Willie Mayfield, advising you that the mediation office would not be able to provide mediation for you since being informed that you had been advised by your doctor that you cannot currently attend mediation. You were also advised in the letter, that you had ten (10) days from the receipt of the letter to appeal the proposed action to the deciding official as outlined in the Notice of proposed Removal. Postal records reflect that the letter was delivered to your address of record on April 30, 2007.

I find that the charge as written in the Notice of March 28, 2007, is fully supported by the evidence and warrants your removal from the U.S. Postal Service.

I have considered the nature and seriousness of the offense, it's relation to your duties, position and responsibilities and your twenty five years of service. You used your position to influence employees under your supervision to give you a birthday party. You also submitted a list of gifts you

wanted employees under your supervision to buy for you. You had an opportunity to explain your actions but you would not do. On September 1, 2008, Reporting agents attempted to meet you at your home three separate times and you did not answer the door. On November 8, 2008, at the Lafayette P&DC, Reporting Agents attempted to interview you in reference to influencing the actions of employees under your supervision. Agents identified themselves to you prior to the interview and you refused to speak with the agents. You then asked if the interview was voluntary and when the RA told you that it was, you responded "I'm out of here", and you left the room. Your unavailability to explain your actions speaks to your ability to take responsibility for your actions. I have also considered your response and your job level, including your supervisory role and the prominence of your position. Your position as a manager requires you to manage and supervise the work of employees and to promote the efficiency of the operation. Your actions have served to undermine any level of trust that you can perform the duties of your job with your employees or with the general public I have lost confid3ence in your ability to be an honest, effective Postal employee. You were fully aware of the postal rules and reputations and that you are prohibited from engaging in conduct that reflects negatively on the Postal Service.

Your misconduct constitutes a clear breach of agency regulations requiring managers to be responsible for the daily operation of the unit and to serve as an example to their employees. You were

also responsible to ensure the efficiency of the operation. Any action short of your removal would erode the basic employer-employee relationship and seriously damage the reputation of the United States Postal Service. There are no mitigating circumstances that would warrant a lesser action. Your failure to properly perform your managerial duties was unwarranted. There are similar instances of misconduct that have been dealt with in like fashion, therefore; I find the charge as stated in the Notice of March 28, 2007 Proposal fully supports and warrants your removal from the Postal Service.

In reaching my decision, I have considered the nature and seriousness of the offense, the relationship to your duties, responsibilities, your job level, your length of service, your past work record, the possibility of rehabilitation, lack of mitigating factors, and the consistency of the penalty assessed.

The removal will be effective close of business Friday, July 20, 2007.

You have a right to appeal this decision in writing to the Merit Systems Protection Board (MSPB); 1100 Commerce Street, Room 820, Dallas TX 75242-9979 within 30 calendar days form the effective date of this decision. Your appeal to the MSPC should state whether you do or do not wish a hearing and you should furnish me a copy of your appeal. For further information 0n appeals procedures, contact Toni Andry, Labor Relations Specialist (A), 8101 Bluebonnet Blvd, Baton Rouge, La. 70826-9401 at 225-763-3777. Attached for your reference are a

copy of the MSPB regulations and a copy of the appeal form.

If you believe that this action is based, in whole or in part, on discrimination, you have the option of filing an appeal with the MSPB or filing an EEO complaint with the Postal Service, but not both. Before filing an EEO complaint, you must bring the matter to the attention of an EEO counselor by calling 888-EEO-USPS within 45 days of the effective date of this decision. The EEO complaint will be processed pursuant to the appropriate regulations (29 CFR Section 1614.302) through 1614.310).

If you file an MSPB appeal, you are not entitled to a hearing by the Equal Employment Opportunity Commission (EEOC) unless:

- Your appeal to the MSPB is dismissed for lack of jurisdiction, or
- The Postal Service fails to issue a final agency decision on your EEO complaint within 120 days of the date you filed your EEO complaint.

You may request a hearing by the MSPB after the Postal Service has rendered a decision on your EEO complaint or after 120 calendar days from the date of filing your complaint, whichever occurs first.

If you appeal this action, you will remain on the rolls, but in a non-pay, non-duty status after the effective date of this action until disposition of your case has been reached either by settlement or through exhaustion of your administrative remedies.

If this action is reversed or modified on appeal, back pay may be allowed in accordance with 5 CFR Section 550.801 et. Seq., as applicable, unless the award or decision specified otherwise.

/s/ 7/13/07
Signature of Deciding Official

Jerry A. LeDoux 7/13/07
Name of Deciding Official (printed)